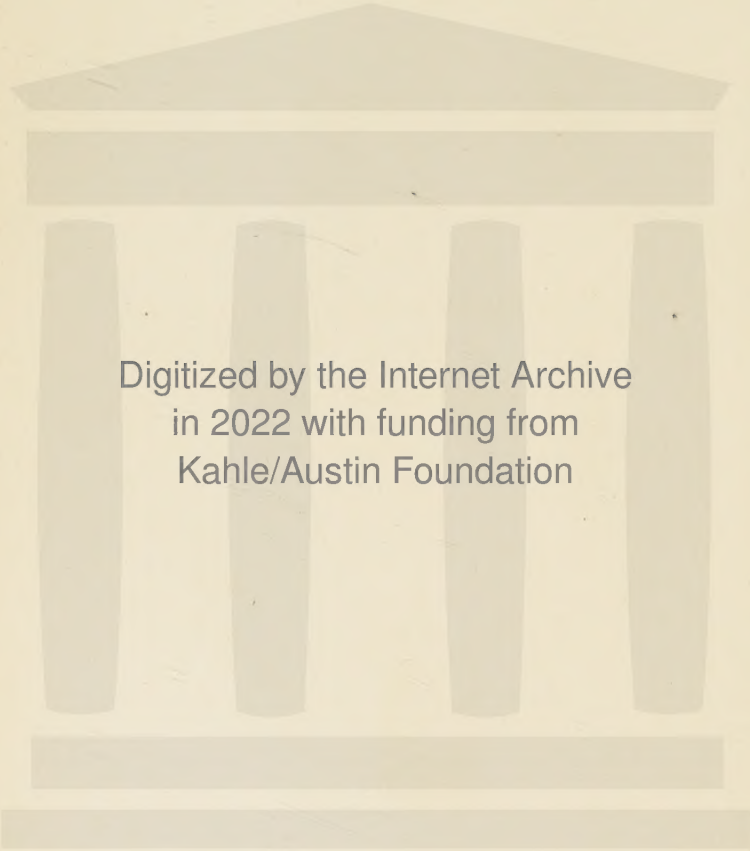


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GORDON'S ANNOTATED FORMS OF AGREEMENT

By

SAUL GORDON

MEMBER OF THE NEW YORK BAR

INTRODUCTION

By

I. MAURICE WORMSER

EDITOR OF THE "NEW YORK LAW JOURNAL"

PROFESSOR OF LAW, FORDHAM UNIVERSITY SCHOOL OF LAW



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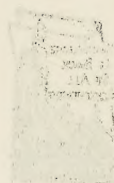
GORDON'S ANNOTATED FORMS OF AGREEMENT

By
SAUL GORDON
ATTORNEY AT LAW NEW YORK CITY

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SAUL GORDON

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TO

M. G., F. F., AND J. M. G.

(Ab initio—ad finem)

PREFACE

THE aim of this book is to furnish a collection of forms of agreement, which bear the hall-mark of sound usage. As the foot-notes indicate, most of the forms have been drawn from the reservoirs of litigation. The meaning and effect of many of them have been judicially determined, either in whole or in part, and, to that extent, they may be regarded as adjudicated precedents. Such of the forms as have been involved in litigation, but have not been judicially considered, have been subjected to the scrutiny of contending counsel, and, in the absence of objection by them, it may be assumed that they have been tried and, unlike the Babylonians of old, have not been found wanting. Those forms which have not been entangled in litigation have been drafted and successfully used by attorneys whose experience and skill lend authority to their work. No form, however, has been included, without having been subjected to the test of a painstaking examination of the law applicable to it. Supporting citations have, of course, been added by me.

In the present unscientific state of legal terminology, it may not be amiss to point out that the word "agreement," as used herein, has been employed in its most inclusive legal sense. The same condition has made it necessary to adopt the encyclopedic method in arranging the chapters of the book. Although nearly all of the forms are matters of public record, changes have been made in the names of contracting parties, dates, etc., in order to give the forms an impersonal air. While effort has not been spared to clarify the language of the forms, the temptation has been resisted to carry the process of simplification to the point of modifying, or changing, matters of substance—a course which might detract from the value of the forms as precedents. Obscurities in language and objections pointed out by the courts have, however, been eliminated.

It is hoped that the character and variety of the forms will enable the user adequately to cope not only with the simple, but, also, with the most intricate contractual relations born of the

complexities of modern life. Suggestions for increasing the usefulness of the book will be gratefully received.

Thanks are due to Ex-Judge William M. K. Olcott, of New York City, whose valuable assistance facilitated the completion of the book. Professor I. Maurice Wormser, of Fordham University School of Law, has added to the burden of my indebtedness, by his kindly encouragement and incisive suggestions. Thanks likewise are due to Alexander M. Hamburg, Esq., Joseph B. Lynch, Esq., and Samuel Null, Esq., all of the New York Bar, for invaluable assistance. The arduous task of proof-reading was, also, undertaken by Mr. Null.

However, it would be neither fitting nor proper to send this book forth, without here acknowledging my indebtedness to my first great master in the law—the late William Albert Keener. He was a distinguished lawyer, a learned judge, and a profound teacher of the law. His untimely death was a severe loss not only to me, but to all others interested in the science of law of which he was one of America's most brilliant exponents.

S. G.

INTRODUCTION

DRAFTING an agreement is a fine art, which, unhappily, is not understood any too well. While this may be due to the union in this country in the same person of the very diverse functions of the solicitor and the barrister, the fact remains that our reports are literally bestrewn with the wreckage of ill-drawn agreements. Indeed, the parol evidence rule itself, so far as it applies to ambiguous contracts, is a testimonial to the melancholy fact that written agreements only too frequently are ineptly drawn.

The preparation of an agreement demands the exercise of talent and skill of a high order. As a written agreement is a representation on paper of the contractual obligations assumed by parties, the first qualification of the draftsman must be a comprehensive knowledge of grammar, punctuation, and the other elements essential to good composition. While the delicate brilliancy of style of a Stevenson or the rolling march of words of a Macaulay may be unnecessary, there is certainly imperative need for precision, clearness and logical arrangement.¹ Axiomatic though this is, every lawyer is aware that many written agreements so violate the King's English that, like foundering ships, they go down with their burden of rights and duties. Although a court, occasionally, may misapprehend the meaning of a written agreement,² more often the fault must be laid at the door of the draftsman who prepared it. Thus the presence of a single superfluous word in a guaranty accepted by a bank culminated in expensive litigation, which was terminated only in the New York Court of Appeals.³

¹ Hogan, *J.*, in *Urbis Realty Co. v. Globe Realty Co.* (1923), 235 N. Y. 194, 139 N. E. 238, correctly said: "The rights and obligations of the parties under the contract entered into between them, must be determined from the language employed therein, which if unambiguous and found to clearly express the covenants assumed by the parties, will control in an interpretation of the agreement between the parties."

² Accord: Opinion of Kelly, *J.* (now *P. J.*), in *Titus v. Bassi* (1918), 182 App. Div. 387, 169 N. Y. Supp. 49.

³ *First National Bank v. Jones* (1916), 219 N. Y. 312, 114 N. E. 1067, where Chase, *J.*, said: "The intention of the parties to the agreement under consideration to make an absolute and unconditional guaranty would be entirely clear were it not for the use of the word 'ultimate'." See Form No. 174, *post*, where the form will be found with the word "ultimate" properly eliminated.

The command of sound English by no means exhausts the list of qualifications of the successful draftsman. Such a draftsman must acquire, or be gifted with, foresight to a rare degree. As is well known, contracting parties, in the flush of entering into business relations, usually are concerned only with their immediate needs. But a far-sighted draftsman, because of his familiarity with human nature and the mutability of business relations, will never yield to the perilous impulsiveness of his client. Instead, by drawing upon his experience and imagination, he will forecast and regulate the variegated situations which may come into being after the agreement has become operative. If he should omit to do so, the results may prove most detrimental to his client.

Not so many years ago, an advertiser, for a valuable consideration, received the privilege of maintaining an advertising sign on a building in New York City. After the term ended, the licensor sought to continue the liability of the advertiser for an additional term, because the latter had failed to remove its sign. Because the agreement omitted to make provision for this situation, the advertiser escaped further liability only after protracted litigation.⁴

The ultimate value of an agreement must be measured by the extent of the legal relief which it will afford in the event of a breach of its terms. An agreement that is without the pale of legal assistance is as useless as a judgment which has been reversed by an appellate court. It is evident, therefore, that a draftsman must be learned in the law in order successfully to discharge his duty to his client. He must not only know the law, but must, also, possess the faculty of positing objectively the effect of a rule of law. In other words, a rule of law must be to him something more than an intangible principle which is embodied in the common law or enunciated by statute; it must serve his client as a sword or a buckler, as occasion may require.

Let me illustrate: It is rudimentary knowledge that a seller of goods, who fails to declare their full value to the carrier, will be unable to recover the purchase price from the buyer, if the goods are lost while in transit and the carrier, as is common,

⁴ *United Merchants' Realty Improvement Co. v. N. Y. Hippodrome* (1911), 201 N. Y. 601, 95 N. E. 1140. Compare with Form No. 5, *post*, as revised by author.

has limited its liability to a sum less than the value of the goods.⁵ Notwithstanding this familiar rule of law, literally thousands of important agreements are drawn which fail adequately to protect the seller in such a contingency.⁶

Again, the courts, with striking unanimity, have declared that a clause which purports to require the payment of liquidated damages upon the happening of any one of a number of breaches of varying importance which may be out of all proportion to the sum stipulated as liquidated damages will constitute an unenforceable penalty.⁷ Yet how many agreements are drawn which daily violate this elementary rule of law.

While perpetual motion may be a dream, of the making of law books there seems to be no end. In fact, it is one of America's chief industries. Their rising tidal wave threatens to submerge not only the Bench and Bar, but, also, those whose editorial duties, like mine, includes the laborious task of reviewing them. In spite of all this, there is a distinct and genuine need for a book such as *Gordon's Annotated Forms of Agreement*. Drawing its material from adjudicated cases and from forms of agreement which have withstood the test of actual use, this book, to use a hackneyed but apt term in this case, fills a long-felt want.

I have marked the development of this work during the long years of its conception. The amount of labor and care which it entailed can best be understood only by one who has thus observed its growth, or by one who undertakes the herculean task of comparing the contents of the book with its sources. The book is not a product of a theorist. On the contrary, forged in the school of actual practical experience, it has been tempered by a keen analytical mind which has long specialized in this field of work.

The author has studiously adhered to the most approved lines of modernistic draftsmanship. The result is that the various agreements are free from archaic expressions, anachronisms, redundancies, and clumsiness of diction. It is particularly

⁵ *Miller v. Harvey* (1917), 221 N. Y. 54, 16 N. E. 781, L. R. A. A. 1917 F 559; Uniform Sales Act, section 46, subdivision 2.

⁶ See Form No. 80, *post*, which expressly makes known the duty of the seller to declare to the carrier, the full value of the goods shipped.

⁷ *Stimpson v. Minsker* (1917), 177 App. Div. 536, 164 N. Y. Supp. 465. See Form No. 67, *post*, for a good example of a proper provision for liquidated damages.

interesting to note that the author has escaped the bondage of empty formalism. For example, he has, almost invariably, abandoned the use of that misleading consideration clause, "now, therefore, in consideration of \$1.00 and other good and valuable consideration, etc." Since the nominal consideration almost never is received, an agreement which contains such a consideration clause, but no mutual promises, is, nevertheless, *nudum pactum*, if it is intended as a bilateral agreement. The substitution of the simple consideration clause "wherein it is mutually agreed," is not only more in harmony with the facts which usually attend the making of an agreement, but is, also, far more scientific. The usefulness of indicating the actually decided cases from which many of the forms have been taken and of supporting the legal force of other forms by legal citations, is too obvious to require elaboration. In this respect, the book represents a marked and valuable departure from, and improvement upon, others.

The importance of exercising foresight in preparing an agreement cannot be stressed too much. This book will be particularly valuable to the lawyer as an aid in this connection. Representing, as it does, the foresight of numerous attorneys, and containing so many agreements which have been tested in the fire of real litigation, it cannot but prove a valuable guide to lawyers, who desire to protect *in futuro* the rights of their clients—one of the most difficult tasks which confronts the draftsman.

An examination will disclose that rules of law have been correctly treated by the author as something more than nebulous principles. With the help of this book, it should be a simple matter for any draftsman readily and properly to safeguard the rights of his client under all ordinary circumstances.

My long experience as a professor of law has impressed me with the fact that, while law school students may be well grounded in the principles of law, they are handicapped by a lack of knowledge of their practical application. Theory and actual practice seem to represent too frequently opposite sides of the shield of life. If this book were introduced for study in the courses in our schools and colleges of law, the result, in my opinion, could not but be beneficial to the law schools, to

their students, and last, but certainly not least, to the Bench and Bar.

The author deserves the thanks of the profession for his success in his important undertaking.

I. MAURICE WORMSER,
Editor of the *New York Law Journal*
Professor of Law, Fordham University
School of Law.

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ANNOTATED FORMS OF AGREEMENT

CHAPTER I

ADVERTISER AND SPACE OWNER

Section 1.—Agreements.

- No. 1—Agreement for advertising space in successive issues of monthly magazine, with guarantee of stated circulation.
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SECTION 1.—AGREEMENTS.

No. 1.

Agreement for advertising space in successive issues of monthly magazine, with guarantee of stated circulation.¹

AGREEMENT, made January 5, 1923, between the Doe Co., Inc., a corporation, duly organized under the laws of the State of New

¹ Adapted from *Cream of Wheat Co. v. The Arthur H. Crist Co.* (1918), 222 N. Y. 487, 119 N. E. 74.

York, and having its principal office at No. 11½ Main Street, in the City of Cooperstown, State of New York (herein called the "First Party"), and Richard Roe, Inc., a corporation, duly organized under the laws of the State of Minnesota, and having its principal office at No. 37½ Main Street, in the City of Minneapolis, State of Minnesota (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That the First Party shall insert the advertisement of the Second Party in its monthly magazine, known as *Doe Motherhood*, in the manner, and at the times, and for the price, following, to wit:

- (a) Size of Advertisement—One full page.
- (b) Position—Third cover.
- (c) Times of Insertion—Each monthly issue printed for the year 1923.
- (d) Price—Sixty (\$60) dollars an issue.
- (e) Payment—Not later than thirty (30) days after the date of publication, minus a deduction of five (5%) per cent for any payment made, within ten (10) days of the date of publication.

2. That the Second Party shall furnish the First Party with copy for its advertisement for each issue of the magazine, not less than three (3) weeks prior to the date of its publication. If the Second Party shall fail to deliver such copy within such time, the First Party shall use the copy theretofore supplied for the Second Party's latest advertisement, and shall continue to print the same in each new issue, until such time as other copy shall have been supplied to it by the Second Party, as herein prescribed.

3. (a) That, if the advertisement of the Second Party shall not be printed in any issue, the First Party shall forthwith pay to the Second Party the sum of sixty (\$60) dollars as liquidated damages for each such omission.

(b) That, if the advertisement of the Second Party shall not be printed in the position above provided, the First Party shall be entitled to receive no compensation for such improper insertion, and, in addition thereto, the Second Party shall have the right to terminate this contract, by giving to the First Party written notice of its election to exercise its option to cancel the same.

4. That the First Party guarantees that the circulation of each issue of its said magazine, during the term of this contract, shall

consist of not less than sixty thousand (60,000) copies; and the term "circulation," for the purposes of this contract, shall be deemed to mean the total number of copies of each issue of said magazine, which shall be printed, sold and delivered by the First Party to news agencies and to such of the First Party's subscribers as may have paid therefor in advance, or who may pay therefor at any time during the term of this contract, exclusive of all copies which shall be returned, or not be paid for by the news agencies, or which shall be given away in any manner whatsoever.

5. (a) That the First Party shall permit the Second Party, at least twice, during the term of this contract, and at such time, or times, as the Second Party may select, to have full access to all books and papers of the First Party, which are, or may be, necessary, or useful, for the purposes of enabling the Second Party to examine and ascertain the monthly circulation of the said magazine and the methods adopted, or pursued, by the First Party in obtaining, maintaining and increasing the circulation thereof.

(b) That, if it shall appear from any such examination, or examinations, that the circulation of any issue of said magazine has been less than sixty thousand (60,000) copies, the First Party shall forthwith pay to the Second Party all the expenses incurred by the Second Party in making such examination or examinations, and, in addition thereto, shall immediately make a *pro rata* rebate in cash to the Second Party for the total amount of such shortage.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed by their respective Presidents, thereunto duly authorized, and their corporate seals to be affixed, attested by their respective Secretaries, the day and year first above written.

Doe Co., Inc.,

By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe, Inc.,

By Richard Roe,
President.

(Seal)

Attest:

Henry Koe,
Secretary.

No. 2.

Agreement for advertising space in newspaper.²

New York City,
January 5, 1923.

Gazette Newspaper Co.,
Gazette Building,
New York City.

Gentlemen:

We hereby agree:

(a) To publish advertisements of our business in the *Daily Morning Gazette*, which shall occupy fifty thousand (50,000) inches of space, during the period of one year beginning January 5, 1923;

(b) To pay you, on or before the tenth day of each month, sixty (60¢) cents for each inch of space used by us, during the preceding calendar month;

(c) That all copy and cuts shall be furnished by us, and that they shall not be used, unless approved of by you;

(d) That the space contracted for may be used by us at will, during the said period, provided, however, that not more than one page of space shall be used by us in any one issue;

(e) That if this contract shall be breached by us, before it has been fully performed, or if we shall fail to use all of such space within the aforesaid period, we shall pay you for so much of such space as we may have used at the higher rate therefor shown on the reverse side of this contract; and

(f) That nothing in respect of time, rate, space, position, or any other specification, which is not contained herein, shall be binding upon either of us.

Yours very truly,

Advertiser: John Doe & Co.

Address: 37½ Broadway,
New York City.

Agreed to and accepted by Gazette Newspaper Co.,

Per Richard Roe.

[Annex Schedule of Higher Rates to Reverse Side.]

² Cf. *Tradesman Co. v. Superior Mfg. Co.* (1907), 147 Mich. 702, 111 N. W. 343; *Press Publishing Co. v. Ehrich* (1909), 135 App. Div. 533, 120 N. Y. Supp. 363.

No. 3.

Agreement for advertising space in theatre programs.³

Messrs. John Doe & Co.,
111½ Broadway,
New York City.

New York City,
January 5, 1923.

Gentlemen:

I hereby authorize you to insert my advertisement in the programs of the Washington, Lincoln and Jefferson Theatres, in the Borough of Manhattan, New York City; and, for that purpose, I hereby hire the space of one-quarter of a page in the programs which shall be supplied by you to each of the said theatres, during the theatrical season of 1923-1924; and I agree to pay you therefor the sum of thirty (\$30) dollars on the last business day of each month during such period.

If, for any reason, performances shall not be given, at any time or times, in any of the aforesaid theatres, this contract shall, nevertheless, continue in force, but I shall receive a *pro rata* allowance for the performances omitted.

The omission of the advertisement from one, or more, issues of any program, or programs, shall not constitute a violation of this agreement, but I shall be entitled to receive, at your option, either a *pro rata* rebate therefor, or an additional publication in such program, or programs, for every such omission.

Yours very truly,

Name: Richard Roe.

Address: 37½ Broadway,
New York City.

New York City,
January 5, 1923.

Mr. Richard Roe,
37½ Broadway,
New York City.

Dear Sir:

We hereby accept your offer to advertise in the programs of the Washington, Lincoln and Jefferson Theatres, in the Borough of

³ Cf. *Ware Brothers Co. v. Cortland Cart & Carriage Co.* (1913), 210 N. Y. 122, 103 N. E. 890; *Ware Brothers Co. v. Cortland Cart & Carriage Co.* (1908), 192 N. Y. 439, 85 N. E. 666, 22 L. R. A. (N. S.), 272, 127 Am. St. Rep. 914.

Manhattan, New York City, which was delivered to us by our Mr. Jones. We have reserved for you the space specified, and an exact copy of your offer is hereto annexed.

Thanking you for your business, we are,

Yours very truly,

John Doe & Co.,

By John Doe,

President.

[Annex to This Acceptance Copy of Advertiser's Offer.]

No. 4.

Agreement to insert advertising cards in street cars.⁴

New York City, January 5, 1923.

We hereby rent from the Doe Car Advertising Co., upon the terms and conditions printed on the back hereof, eleven by twenty-one (11x21) inches of space in each of the street cars operated on the following lines in the Borough of Manhattan, New York City: Columbus, Amsterdam and Fourth Avenues; and we authorize the said Doe Car Advertising Co., to place and maintain our advertising cards in such space, for the period of five successive weeks, beginning on January 5, 1923; and, in consideration thereof, we agree to pay the sum of five thousand (\$5,000) dollars to the said Doe Advertising Co., on or before February 11, 1923.

We agree that the subject of the said advertising cards shall be the Roe Park Estates.

Advertiser: Roe Park Estates,

By Richard Roe,

President.

Address: 371½ Broadway,

New York City.

The Doe Car Advertising Co., hereby lets the aforesaid space to the advertiser, and agrees to place and maintain the cards of the advertiser in the said street cars, upon the terms and conditions printed on the back hereof, and for the consideration stated above.

Doe Car Advertising Co.,

By John Doe,

President.

⁴ Adapted from *New York City Car Advertising Co. v. Morris Park Estates*, (1917), 222 N. Y. 552, 118 N. E. 1070.

(Reverse Side.)

1. The advertiser shall furnish all cards required, and the style and contents of all such cards, before their insertion, shall be approved of by the Doe Car Advertising Co.

2. The advertiser alone shall bear any loss which may result from any delay in delivering approved cards to the Doe Car Advertising Co., for insertion.

3. The omission by the Doe Car Advertising Co., of a reasonable number of cards from the street cars mentioned, shall not constitute a breach of this contract, but any such omission, or omissions, shall entitle the advertiser to receive a *pro rata* rebate for the number of such cards that may be omitted.

4. The lines, as named herein, are intended to be descriptive of the routes.

5. The leasing of the space herein provided for is subject to such changes in the operation of the street cars as may be made by the corporation, or corporations, operating the street cars in which the said advertising cards are to be placed; and, if street cars of other lines should be operated over the lines herein named, the advertiser shall be entitled to the full amount of space contracted for, whether in the street cars of the lines herein mentioned, or in the street cars of such other lines as may be run over the same route, or routes.

6. If, before the expiration of this contract, the Doe Car Advertising Co., for any cause, shall cease to have the right to maintain, retain, control or continue to rent any part of the space contracted for in, or upon, the cars of any line, or lines, named herein, this contract shall continue in full force and effect in respect of such line or lines as shall not be eliminated by such cessation; and the advertiser shall have no claim against the Doe Car Advertising Co., by reason thereof, except to obtain a *pro rata* reduction for the amount of space thereby discontinued.

7. All payments must be made to the Doe Car Advertising Co., or order.

8. The advertiser shall not assign, or sublet, this contract, without the written consent of the Doe Car Advertising Co., first obtained.

9. Every stipulation is contained in this contract, and it is agreed that no verbal condition shall bind either party thereto.

No. 5.

Agreement authorizing erection and maintenance of bulletin board for displaying advertisements.⁵

AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That the First Party hereby lets to the Second Party, and the Second Party hereby takes from the First Party, all of the roof of the premises, known as No. 57½ Broadway, Borough of Manhattan, New York City, for a term of two years, beginning on the date hereof and ending on January 4, 1925, for use by the Second Party solely for the purpose of erecting and maintaining thereon a bulletin board for displaying advertisements of a lawful nature, other than advertisements relating to tobacco or smokers' articles.

2. That the Second Party shall pay to the First Party the yearly rental, or sum, of two thousand (\$2,000) dollars, in installments of one hundred and sixty-six and 66/100 (\$166.66 2/3) dollars each, in advance, on the first day of each month.

3. That the Second Party shall have the right to equip said bulletin board with necessary equipment, consisting of wires and such other things as may be necessary, or incidental, in erecting and maintaining said bulletin board, provided, however:

(a) that the Second Party shall, in each instance, first obtain any necessary permission therefor, or consent thereto, from the proper municipal departments, or bureaus, and from the Board of Fire Underwriters, and

(b) that neither the said wires nor equipment shall interfere with any of the tenants of said building.

4. That, for the purpose of erecting and maintaining said bulletin board, as well as for the purpose of changing the same, or the equipment thereof, from time to time, the Second Party shall have access to said roof, during business hours.

5. That the Second Party shall, at his own expense, during the

⁵ Adapted from *Merchants' Realty & Improvement Co. v. N. Y. Hippodrome* (1911), 201 N. Y. 601, 95 N. E. 1140.

continuance of this agreement, keep, in complete repair, the plumbing work, pipes, tin, slate and glass of the said roof, in so far as such repair, or repairs, may become necessary, or desirable, as the result of the erection, or maintenance, of the bulletin board on said roof, or by the use thereof. If, however, the Second Party shall fail to make said repairs, at all times, the First Party may do so, at the expense of the Second Party, without notice; and, thereupon, any amount so expended by the First Party shall be deemed to be rent, and shall be added to, and form a part of, the rent for the next succeeding month, with the same effect as if said sum had been originally included as a part of the rent herein.

6. That the First Party reserves the right, in his discretion, to enter upon said roof and make any improvements, which he may desire, or to erect or construct skylights thereon, at any time; and the Second Party shall, at all times, maintain the said bulletin board, wires and other equipment on said roof without interfering with access to the roof, or any parts thereof, or with the light of any skylight, which may be erected, or constructed, on the said roof, or with the draught of the furnace chimney, or chimneys, thereon.

7. That the First Party shall not be liable for any damages, or injuries, sustained by the Second Party, by any cause, or by any fluid.

8. That, if, on or before January 4, 1925, the Second Party shall fail to remove the bulletin board and equipment from the said roof, the First Party may, within one week after January 4, 1925, do so, at the expense of the Second Party, or the First Party, at his option, may treat the failure of the Second Party to remove the bulletin board and equipment from the said roof, within the time prescribed therefor, as a continuation of this agreement, upon all the terms, covenants and conditions herein set forth, for the period of one year from and after January 4, 1925.

9. That the First Party may, at his election, enforce any of the terms, covenants, or conditions hereof, by injunction, without waiving any other right, or remedy, to which he may be entitled, at law, or otherwise.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L. S.).

Richard Roe (L. S.).

In the presence of
John Jones.

No. 6.

Same—another form.⁶

AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

FIRST: That the First Party hereby lets to the Second Party, and the Second Party hereby takes from the First Party, the entire roof of the "Doe Building," at No. 11½ Broadway, Borough of Manhattan, New York City, for the term of three (3) years, beginning on February 1, 1923, and ending on January 31, 1926, for use by the Second Party for the sole purpose of erecting and maintaining thereon a structure for displaying painted and electric advertisements, relating to the products of the Second Party.

SECOND: That the Second Party shall pay to the First Party the sum of fifteen thousand (\$15,000) dollars per annum, in equal monthly installments, in advance, on the first day of each and every month, during the term hereof, except that the Second Party shall, contemporaneously with the execution of this agreement, pay to the First Party the rent for the first month of the term hereunder.

THIRD: That this renting is upon the following express terms and conditions:

1. (a) That the Second Party shall have the right to erect and maintain on said roof a structure and the necessary equipment, for the purpose of enabling the Second Party to display its advertisements; but such structure and equipment shall comply, in all respects, with all ordinances and requirements of the City of New York, and of its various bureaus and departments, and of the Board of Fire Underwriters.

(b) That the First Party, upon reasonable notice from the Second Party, shall sign any application, or permits, which may be necessary, in order to enable the Second Party to use the said premises, for the purposes herein provided.

⁶ Adapted from *Mecca Realty Co. v. Kellogg Toasted Corn Flakes Co.* (1917), 221 N. Y. 724, 117 N. E. 1076

2. That such structure and equipment shall be used by the Second Party, for the sole purpose of displaying painted and/or electric advertisements, advertising the products of the Second Party.

3. That the Second Party shall have the right to use not more than twenty-five (25) square feet of space, in such part of the cellar of the building as the First Party may designate, for the purpose of connecting his equipment with the electric light mains, and for the purpose of installing switches and other electric appliances, for use in lighting any sign erected by him; and the Second Party shall, also, have the right, upon obtaining the written consent thereto of the First Party, to install all wires and fixtures that he may require and that the Board of Fire Underwriters may permit him to install, for the purpose of lighting properly the sign structures erected by him on the said premises; but the Second Party shall pay all costs and expenses, which may be incurred in making any of the aforesaid connections and installations.

4. That any structure placed upon, or affixed to, any portion of the roof of said building by the Second Party, and all switches, wires and other property installed by the Second Party, in, or on, said building, shall be, and remain, the personal property of the Second Party, and shall be removed by the Second Party, immediately after the termination of this lease; and the Second Party, upon the termination of this lease, shall, at his own cost and expense, forthwith restore the said roof to its original condition.

5. That the Second Party shall purchase from the First Party all electric current that may be required for illuminating the sign of the Second Party, and the Second Party shall pay the First Party therefor, at the end of each month, during said term, or immediately upon the presentation of any bill therefor.

6. That the Second Party shall, at his own cost and expense, promptly execute and comply with all rules, orders, ordinances and regulations of the City Government, and of any and all of its departments and bureaus, applicable to said premises, for the correction, prevention and abatement of nuisances and other grievances, in, upon, or connected with, the said premises, during said term, and shall, at his own cost and expense, promptly comply with and execute all rules, orders and regulations of the Board of Fire Underwriters, for the prevention of fires.

7. That, if the present rate of insurance premiums upon the said building, or upon any of the contents thereof, shall be raised,

or increased, in consequence of the occupancy and use of said premises by the Second Party, then the Second Party shall, upon demand, pay such increase in premiums, in addition to the rent herein provided for, and, if not so paid, the same shall be added to, and become a part of, the next succeeding month's rent.

8. That, during the Second Party's occupancy of the said roof, the Second Party shall promptly repair any injury to the roof, or to any other part of the said building, which may be caused by the erection, or maintenance, of such structure and equipment, or which may otherwise result from the occupancy, or use, of said roof by the Second Party; and, upon the failure of the Second Party promptly to make any such repairs, the First Party shall have the right to make the same, and, thereupon, the Second Party, upon demand, shall repay the cost thereof to the First Party, or, at the election of the First Party, such cost shall be added to, and become a part of, the next succeeding month's rent.

9. That the Second Party, at all reasonable times, shall have a right of access through the building of the First Party, for the purpose of constructing, painting and maintaining advertisements, as herein provided, and for all other purposes, which may be necessary, or proper, to the enjoyment of the Second Party's occupancy; but nothing herein contained shall obligate, or require, the First Party to open the said building for the Second Party on Sundays, legal holidays, or at night.

10. That the Second Party shall keep and save the First Party harmless from any damage, or injury, to any person, or property, which may result from the erection, or maintenance, of any structure, or equipment, by the Second Party.

11. That if the Second Party shall, at any time, be prevented by reason of any law, or ordinance, from erecting, or maintaining, any reasonably safe sign, or structure, as herein authorized, then, and in such event, the Second Party shall have the right to cancel and annul this lease, by giving to the First Party thirty (30) days' notice in writing of the Second Party's intention so to do.

12. That, if the said building shall be torn down, or if the said building shall be so injured that the Second Party shall be prevented from maintaining his advertising sign on the roof thereof, then, and in such event, this lease shall be terminated as of the date when said building shall have been so torn down or injured.

13. (a) That, if default shall be made by the Second Party in the payment of any rent, or in the payment of electric current, or any part thereof, or if default, or violation, shall be made by the Second Party in the performance of any of the other covenants, promises or agreements herein contained, this lease shall, if the First Party shall so elect, terminate forthwith; and the said First Party, his legal representatives and assigns, are hereby authorized, in any such case, at his, or their, election, to re-enter the said premises and hold the same as if this lease had not been made; and the said First Party shall have the right to institute summary proceedings for the recovery of the possession of the premises as for a holding over, after the expiration of the term hereunder.

(b) That the Second Party hereby expressly waives the service of notice of intention to re-enter, or of legal proceedings to that end, and, in such case, no demand for the possession of the premises, or for the payment of said rent, or electric current, shall be necessary, as a condition precedent to the institution of any legal proceedings.

14. That if, at any time during the term of this lease, a building shall be erected on the plot of ground adjoining the First Party's building on the south, of such a height as to obstruct the view of the signs of the Second Party, then the Second Party may, upon giving to the First Party thirty (30) days' notice in writing of his intention so to do, cancel this lease; and such cancellation shall take effect, at the expiration of said thirty (30) days' notice, and thereupon this lease shall cease and determine.

15. That, if the Second Party shall terminate this lease, in pursuance of any of the options given to him hereunder, no claim, or claims, in connection therewith, or by reason thereof, shall be made against the First Party.

16. That the Second Party shall not assign this lease, nor let, or underlet, the whole, or any part, of the said roof, nor make any alterations thereto, without first obtaining the written consent of the said First Party, under the penalty of forfeiture and damages; and that he shall not occupy, or use, the said premises, nor permit the same to be occupied, or used, for any purpose other than that herein expressed, without the like consent under the like penalty.

FOURTH: That the Second Party shall have the right, option and privilege of renewing this lease, for an additional term of two years from and after February 1, 1925, upon the same terms

and conditions as are herein contained, provided written notice of his intention to exercise such right, option and privilege of renewal shall have been given to the First Party, at least one year prior to February 1, 1925.

FIFTH: That the First Party hereby covenants that, upon the payment of the rent herein reserved, and upon the performance by the Second Party of all the other terms, conditions and covenants herein provided to be performed by the Second Party, the Second Party may, and shall, peaceably and quietly have, hold and enjoy the said demised premises, for the term aforesaid.

SIXTH: That this agreement shall be binding upon the parties hereto, and their respective heirs, executors, administrators, and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L. S.).

Richard Roe (L. S.).

In the presence of
John Jones.

No. 7.

Agreement to display illuminated advertising sign.⁷

AGREEMENT, made January 5, 1923, between Doe Advertising Corporation, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That the First Party hereby lets to the Second Party, and the Second Party hereby hires from the First Party, the sign-board, erected on the roof of the building, known as No. 111½ Broadway, Borough of Manhattan, New York City, for the term of two years, beginning February 1, 1923, at the yearly rent of four thousand (\$4,000) dollars, which shall be paid to the First

⁷ Adapted from *Realty Advertising Co. v. Hickson* (1918), 184 App. Div. 168, 171 N. Y. Supp. 455.

Party by the Second Party in equal monthly installments, in advance on the first day of each and every month.

2. (a) That the First Party, at its own cost and expense, shall, within thirty (30) days from the date of this agreement, paint upon said sign-board the advertisement of the Second Party, provided, however, that the Second Party, within three (3) days from the date hereof, shall have furnished to the First Party the necessary copy for such advertisement.

(b) That, if the painting of said advertisement by the First Party shall be completed prior to February 1, 1923, then, and in such event, the term of this agreement shall commence upon the day of the completion of such painting, and shall continue therefrom, until the expiration of the term as above stated; and the Second Party shall pay rent for such additional time, at the rate hereinbefore stated.

(c) That, if for any reason, apart from any delay of the Second Party in performing the covenants herein, the painting of said advertisement by the First Party shall not be completed on February 1, 1923, then, and in such event, the beginning of the term of this agreement shall be fixed as of the date of the completion of the painting of said advertisement by the First Party, and it shall continue thenceforth until the expiration of the term as above set forth.

(d) That the Second Party shall not make any alteration, or change, in any advertisement painted upon said sign-board, without first obtaining the written consent of the First Party.

3. That the First Party, at its own cost and expense, shall illuminate the said sign-board from dusk to midnight; but if, for any reason, such illumination shall not be provided, the First Party shall pay to the Second Party, and the Second Party shall accept, in full settlement thereof, the amount of one-third of one day's rent of the said sign-board for each day that such illumination shall not be provided.

4. That, if the said sign-board shall be damaged by fire, or by any other cause, and the display of the advertisement of the Second Party shall thereby be temporarily discontinued, the Second Party shall not be obligated to pay any rental for the days in which such display shall be discontinued; but, upon the First Party restoring the display of the Second Party's advertisement, the

Second Party shall thenceforth, and for the remainder of the term of this agreement as hereinbefore stated, continue liable for all the terms, provisions and covenants herein set forth.

5. That, in the event of the failure of the Second Party to pay any installment of rent, when due, or in the event that the Second Party shall otherwise fail to perform any of the terms, provisions and covenants of this agreement, it shall be lawful for the First Party to terminate this agreement, and, by force or otherwise, to re-enter upon said roof, and re-take possession of the said sign-board and remove therefrom the advertisement of the Second Party and to relet the said sign-board, or any part thereof, for the whole, or any part, of the then unexpired term, as the First Party shall deem best; and, in any such event, the Second Party each month shall pay to the First Party, during the balance of the term remaining after such resumption of possession by the First Party, the difference, if any, between the amount reserved as rent herein and the amount, which the First Party may receive from the re-letting of the said sign-board, or any part thereof, for such month; and the First Party may demand, sue for, and enforce collection of such amount as may be due, at the expiration of each month. And the Second Party expressly agrees that any such action shall neither bar, nor prejudice, in any way, the right of the First Party to enforce, by like, or other, action, or proceedings, the collection of the amount due at the end of any future month.

6. That the First Party shall have the right to cancel this agreement, at any time prior to its expiration, upon giving to the Second Party at least five (5) days' written notice; and, upon the expiration of the time fixed by such notice, the First Party shall have the right to remove from the sign-board any advertisement, which may then be thereon. But, upon such cancellation, the Second Party shall only be liable for the *pro rata* portion of the amount herein agreed to be paid for the rent of such sign-board; and, if the First Party shall already have received any moneys in excess of the *pro rata* amount due for the period for which such advertisement shall have remained on such sign-board, the amount of such excess shall be refunded to the Second Party.

IN WITNESS WHEREOF, the First Party has caused this agreement to be signed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, and the

Second Party has hereunto set his hand and seal, the day and year first above written.

Doe Advertising Corporation,

By John Doe,

President.

(Seal)

Attest:

John Jones,

Secretary.

Richard Roe (L. S.).

SECTION 2.—MISCELLANY.

No. 8.

Clause defining dimensions of space let.⁸

That the dimensions of the sign-board, as herein stated, are approximate, and shall be deemed to include, as part of the space let, the border, which forms a part of the sign-board.

No. 9.

Option to declare all installments of rent due, under agreement to display sign-board, upon default in one, with right to relet, etc.⁹

It is agreed that, if default shall be made by the Second Party in paying any installment of rent, then, and in such event, at the option of the First Party, all the balance of rent for the remaining period of this agreement shall immediately become due and payable; and, as security for the payment of the rent herein reserved, it is agreed that, in case there shall be a default in the payment of any installment of rent, and the balance of the rent for the remaining period of this lease shall have become due and payable as hereinbefore provided, the First Party shall, and hereby is authorized to, remove the sign of the Second Party from such space, and rent said space, or any part thereof, on behalf of the Second Party, for the whole, or any part of the term, to such person, or persons, or corporation, or corporations, and for such term and upon such conditions as to the First Party shall seem

⁸ Adapted from *Realty Advertising Co. v. Hickson* (1918), 184 App. Div. 168, 171 N. Y. Supp. 455.

⁹ Adapted from *Realty Advertising Co. v. Hickson* (1918), 184 App. Div. 168, 171 N. Y. Supp. 455.

best, and collect the rents thereof, and apply the payments toward any moneys, which may be due to the First Party from the Second Party, and pay the surplus, if any, to the said Second Party. And it is expressly agreed that this authorization of the First Party is, and shall be, irrevocable by the Second Party during the period of this agreement.

No. 10.

Option to terminate agreement to display sign-board, upon erection of obstruction upon adjoining land.¹⁰

If, at any time, during the term of this contract, any fence, boarding, sign, building, addition to any building, or any other structure, shall be placed, constructed or erected upon the adjoining plot of ground to the south, of such a height as will obstruct the view of the signs of the Second Party as provided herein, then the Second Party may, upon giving to the First Party thirty days' notice in writing of its intention so to do, cancel this contract, and from and after the expiration of the period of thirty days specified in such notice, this contract shall be null and void.

¹⁰ Adapted from *Mecca Realty Co. v. Kellogg Toasted Corn Flakes Co.* (1917), 221 N. Y. 724, 117 N. E. 1076.

CHAPTER II

ASSIGNOR AND ASSIGNEE

Section 1.—Assignments.

- No. 11—Assignment of account—short form.
- No. 12—Same—long form.
- No. 13—Assignment of annuity.
- No. 14—Assignment of bond, with covenant of amount due.
- No. 15—Assignment of chattel mortgage, with covenant of amount due.
- No. 16—Assignment of claim upon contract and guarantee, with power of attorney.
- No. 17—Assignment of contingent remainder.
- No. 18—Assignment of contract.
- No. 19—Assignment of contract, with covenants by assignee to perform the contract and to deliver to assignor bond to secure performance.
- No. 20—Assignment of contract of conditional sale by conditional vendor, with covenant of amount due.
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- No. 23—Assignment of debt.
- No. 24—Assignment of dividends, with covenant by the assignor to pay an equivalent amount, upon transfer of his stock.
- No. 25—Assignment of dower by heir.
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Section 2.—Miscellany.

- No. 51—Acceptance of assignment of contract and assumption of its obligations by assignee.
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SECTION 1.—ASSIGNMENTS.

No. 11.

Assignment of account—short form.¹

KNOW ALL MEN, that I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City, in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 371½ Broadway, Borough of Manhattan, New York City (herein called “the Assignee”), hereby assign to the said Assignee all my right, title and interest in all moneys due, or which may become due, to me from Henry Koe, of New York City, upon the annexed statement of account, or upon the sales of goods, wares and merchandise therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L. S.).

In the presence of
John Jones.

[Annex Statement of Account.]

No. 12.

Same—long form.²

KNOW ALL MEN, that I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City (herein called “the

¹ Cf. *Steele-Weddes Co. v. Shoodoc Pond Packing Co.* (1910), 153 Ill. App. 576; *Dix v. Cobb* (1808), 4 Mass. 508.

² Adapted from *Presser v. Central Trust & Savings Co.* (1922), 232 N.Y. 573, 134 N.E. 577.

Assignor"), in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), do hereby sell, assign, transfer and set over to the said Assignee the claim, or account, set forth in the annexed statement of account, and all my right, title and interest in the goods, wares and merchandise described therein, and all moneys due, or which may grow due, upon the said claim, or account, or upon the sale, or sales, therein set forth.

And I, the said Assignor, hereby appoint the said Assignee to be my true and lawful attorney, irrevocable, for me, and in my name and stead, but for such Assignee's own benefit, (1) to sell, assign, transfer, set over, pledge, compromise or discharge the whole, or any part, of said claim, or account, and (2) to do all acts and things necessary, or proper, for any such purpose, and (3) to ask, collect, receive and sue for the moneys due, or which may grow due, upon said claim, or account, and (4) to substitute one person, or more, with like powers; hereby ratifying and confirming all that my said attorney, or his substitute, or substitutes, shall lawfully do, by virtue hereof.

And I, the said Assignor, for the purpose of inducing the said Assignee to accept this assignment, do hereby make the following representations:

1. That the annexed statement of account represents *bona fide* sales of merchandise, and that all goods, wares and merchandise therein represented as sold, were packed and shipped to the customer, as stated therein.

2. That the amount set forth in the annexed statement of account is due and owing from the customer to the Assignor.

3. That no payment has been made by the customer, to, or for the benefit of, the Assignor.

4. That no defense, offset, or counterclaim, thereto exists; and that no agreement has been made under which the customer may claim any deduction, or discount, except as otherwise stated in the annexed statement of account.

5. That said claim, or account, has not been sold, assigned, transferred or pledged; and that, aside from the Assignor, no person, or persons, corporation, or corporations, has, or have, any lien on, or claim to, said account, or the merchandise described therein, or any part thereof.

And I, the said Assignor, covenant, as follows:

1. That the customer will accept and pay in full for the merchandise described in the annexed statement of account.

2. That the Assignor will receive, as the property of the Assignee, any checks, drafts, or moneys, applicable to the annexed statement of account, which shall, at any time, come into the possession or control of the Assignor, and will immediately endorse, transfer and deliver the same to the Assignee.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L. S.).

In the presence of

John Jones.

[Annex Statement of Account.]

No. 13.

Assignment of annuity.³

KNOW ALL MEN, that,

WHEREAS, John Doe, while a resident of the County, City and State of New York, died on December 20, 1920, leaving a last will and testament, bearing the date of May 25, 1919, which was duly admitted to probate as a will of real and personal property by the Surrogates' Court of the State of New York, in and for the County of New York, on January 5, 1921, and recorded in the office of the clerk of said court in liber 677A of wills, at page 258, to the record of which will reference is hereby made for the full and definite provisions thereof; and

WHEREAS, the said testator, by his said last will and testament, gave and bequeathed to Richard Roe such an annuity as the sum of ten thousand (\$10,000) dollars will purchase:

NOW, THEREFORE, I, the said Richard Roe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, in consideration of one dollar (\$1) paid by Henry Koe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), do hereby assign to the said Assignee all my right, title and interest in said annuity, and in all property, real and personal, covered thereby, or embraced therein, together with all my right to elect to take and receive, in lieu of said annuity, the

³ *Cf. Reid v. Brown* (1907), 54 Misc. 401, 106 N. Y. Supp. 27.

capital sum provided therefor in the last will and testament aforementioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

Richard Roe (L.S.).

In the presence of
John Jones.

No. 14.

Assignment of bond, with covenant of amount due.⁴

KNOW ALL MEN, that I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City (herein called "the Assignor"), in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the said Assignee all my right, title and interest in that certain bond, dated January 5, 1920, which was executed and delivered to me, the said Assignor, by one Henry Koe, residing at No. 57½ Broadway, Borough of Manhattan, New York City, and all moneys due, or which may grow due, thereon.

And I, the said Assignor, covenant that there is now due to me upon the said bond, without offset, or defense, of any kind, the sum of one thousand (\$1,000) dollars, with interest thereon, at the rate of six (6%) per cent per annum from January 5, 1921.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

No. 15.

Assignment of chattel mortgage, with covenant of amount due.⁵

KNOW ALL MEN, that I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City (herein called "the Assignor"), in consideration of one (\$1) dollar paid by Richard

⁴ Cf. *Garrettsie v. Van Ness* (1806), 2 N. J. L. 20, 2 Am. Dec. 333.

⁵ Cf. *Schwab Mfg. Co. v. Aizenman* (1905), 106 App. Div. 478, 94 N. Y. Supp. 729.

Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the said Assignee all my right, title and interest in the certain chattel mortgage, dated March 5th, 1922, made by Henry Koe, and filed in the office of the register of the county of New York on March 5th, 1922, at 10.30 A.M., together with the debt, or obligation, described in and secured by said chattel mortgage, and all moneys due, or which may grow due, thereon, with the interest.

And I, the said Assignor, covenant that there is now due to me upon said chattel mortgage, without offset, or defense, of any kind, the principal sum of five thousand (\$5,000) dollars, with interest thereon, at the rate of five (5%) per cent per annum, from March 5th, 1922.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

No. 16.

Assignment of claim upon contract and guarantee, with power of attorney.⁶

KNOW ALL MEN, that the Doe Co., Inc., a corporation, organized under the laws of the State of Arizona, and having its principal office at No. 11½ Broadway, in the City of Los Angeles, State of California (herein called "the Assignor"), in consideration of one (\$1) dollar to such Assignor in hand paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assigns to the said Assignee, his executors, administrators and assigns, to his and their own proper use, benefit and behoof forever, all moneys now, or which may hereafter become, due to the said Assignor, and all claims, demands, and causes of action whatsoever, which the said Assignor now has, or may hereafter have, against Henry Koe, of the City of New York, the Koe Co., Inc., a corporation, organized under the laws of the State of New York, and Richard Koe, of the City of New York, and each of them, whether jointly or severally, under the certain contract in writing, dated March 5,

⁶ Adapted from *Stemmerman v. Kelly* (1917), 220 N. Y. 756, 116 N. E. 1077.

1919, made by the Assignor and the said Henry Koe, and the guarantee in respect thereof in writing, dated March 5, 1919, which was executed and delivered to the Assignor by the said Koe Co., Inc., and the said Richard Koe.

And the said Assignor hereby appoints the said Assignee its true and lawful attorney, irrevocable, with full power of substitution and revocation, for the said Assignor, and in its name, or otherwise, but for the sole use and benefit of the said Assignee, to ask, demand, sue for, collect, receive, compound and give acquittance for the said claim, or claims, demand or demands, and cause or causes of action, or any part thereof.

IN WITNESS WHEREOF, the Assignor has caused this instrument to be signed by its President, thereunto duly authorized, and its corporate seal to be hereunto affixed, attested by its Secretary, this 5th day of January, 1923

Doe Co., Inc.,
By John Doe,
President.

(Seal)

Attest:

John Smith,
Secretary.

No. 17.

Assignment of contingent remainder.⁷

THIS INDENTURE, made January 5th, 1923, between John Doe and Jane Doe, his wife, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein individually, jointly, and severally, called the "First Party"), and Roe Insurance Co., a corporation, duly organized under the laws of the State of New Jersey, and having its principal office at No. 37½ Main Street, Jersey City, New Jersey (herein called the "Second Party"), WITNESSETH:

WHEREAS, Mary Doe, while a resident of the County, City and State of New York, died on March 5th, 1918, leaving a last will and testament bearing the date of May 25, 1916, and a codicil thereto bearing the date of December 13, 1917, which were duly admitted to probate as a will of real and personal property by the Surrogates' Court of the State of New York, in and for the County

⁷ Adapted from *Brown v. Robinson* (1918), 224 N. Y. 301, 120 N. E. 694; re-argument denied (1918), 225 N. Y. 638, 121 N. E. 857.

of New York, on April 11th, 1918, and recorded in the office of the clerk of said court in liber 677A of wills, at page 258, to the record of which will reference is hereby made for the full and definite provisions thereof; and

WHEREAS, the said testatrix, by her said will, gave, devised and bequeathed to Charles Doe and John Smith, who were named therein as the executors and trustees, and who duly qualified as such, all the rest, residue and remainder of her estate, both real and personal, in trust, to divide said residuary estate into two equal parts, or shares, and to hold and possess one of said equal parts, or shares, for the benefit of the said John Doe, until he shall have attained the age of twenty-five years, and, upon the happening of such event, to pay over such equal part, or share, to the said John Doe; and

WHEREAS, the said John Smith was thereafter duly removed as such executor and trustee by the Supreme Court of the State of New York, and Henry Koe was substituted as trustee, and subsequently duly qualified as such, and the said Charles Doe and Henry Koe are now acting as such trustees; and

WHEREAS, the aforesaid John Doe attained the age of twenty-one years on March 21st, 1922, and will be entitled to receive one of such two equal parts, or shares, of the residuary estate of said testatrix, upon his attaining the age of twenty-five years:

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that the said First Party, in consideration of certain valuable considerations, and of the sum of one hundred (\$100) dollars, lawful money of the United States, paid by the Second Party to the First Party, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, conveyed, transferred and set over, and by these presents does grant, bargain, sell, assign, convey, transfer and set over, to the said Second Party, its successors and assigns forever, out of the property, interest, devise, legacy, or distributive share to which the said John Doe is, or shall, or may, be, entitled in one of the said two equal parts, or shares, of said residuary estate, under the will of the said Mary Doe, deceased, upon the termination of the prior estate limited in said will to the trustees, until the said John Doe shall have attained the age of twenty-five years, the net sum of sixty thousand (\$60,000) dollars, free, clear and discharged of all duties, taxes, liens, costs, commissions and expenses, which may accrue, or be due and payable, in respect of the

estate of the testatrix, by the realization and distribution thereof, or out of the interest of the said John Doe therein, with interest on the said sum of sixty thousand (\$60,000) dollars at the rate of six (6%) per cent per annum, from the date when the said John Doe shall have attained the age of twenty-five years.

TO HAVE AND TO HOLD the amount hereby bargained, sold, assigned, conveyed, transferred and set over, unto the second party, its successors and assigns forever.

And the said First Party does hereby make, constitute and appoint the said Second Party, its successors and assigns, his true and lawful attorney and attorneys, irrevocable, with full power of substitution, in his name, or otherwise, but for the sole use and benefit of the said second party, its successors and assigns, to ask, demand, sue for, collect, receive, compound and give acquittance for the amount hereby assigned out of his said property, interest, devise, legacy or distributive share in the said part, or share, of the residuary estate of the said Mary Doe, deceased, which he will be entitled to receive, upon attaining the age of twenty-five years, and, in his name, to bring, maintain and withdraw, or to defend, any suit, or proceedings, at law, or in equity, before any court, or courts, whatsoever, which the said Second Party, its successors, or assigns, may see fit, or be advised, to institute against the trustees under the will of Mary Doe, deceased, or any representative of the estate of said decedent, or against any other person whomsoever, or which it may see fit, or be advised, to defend for the enforcement of the trust created under and by said will for the protection of the said trust estate, or for the protection, or enforcement, of his interest, or interests, under said will.

1. And the said John Doe covenants with the said Second Party, its successors and assigns, as follows:

(a) That the equal half part, or share, of the residuary estate of the said Mary Doe, deceased, to be held by the said trustees, until the said John Doe shall attain the age of twenty-five years, consists of real and personal property, and that the same has a clear market value of one hundred and forty thousand (\$140,000) dollars, over and above all encumbrances, which said fund the said John Doe will be entitled to receive, upon his attaining the age of twenty-five years, after deductions, which may be made for the costs and expenses of the administration of said estate.

(b) That he attained the age of twenty-one years on the 21st day of March, 1922.

(c) That he has not heretofore assigned, or transferred, or attempted to assign, or transfer, his said interest in the estate of said Mary Doe, deceased, or any part thereof, to any person, firm, association, or corporation, and that he has not in any way mortgaged, or encumbered, or attempted to mortgage, or encumber, the same, or any part thereof, and that there are no liens, or encumbrances, upon his said interest in the said estate of any amount whatsoever, excepting a certain mortgage made by said John Doe to the Roe Institute for Scientific Research, dated January 3, 1922, to secure the payment of a certain note for seven thousand (\$7,000) dollars, which said note and mortgage have been paid and satisfied, and a certain other mortgage made by said John Doe to the Roe Trust Company of Philadelphia, dated April 15, 1922, to secure the payment of fifty thousand (\$50,000) dollars, which said mortgage is being paid off and satisfied simultaneously with the execution hereof.

2. The said Jane Doe, wife of the said John Doe, joins in the execution of this instrument, for the purpose of releasing her inchoate right of dower in the real estate of which said residuary estate in part consists, to the extent of the amount hereby assigned.

IN WITNESS WHEREOF, the said John Doe and Jane Doe have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Jane Doe (L.S.).

In the presence of
John Jones.

No. 18.

Assignment of contract.⁸

KNOW ALL MEN, that I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City, in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the said Assignee all my right, title and interest in the certain contract entered into by me with the

⁸ *Cf. Arkansas Valley Smelting Co. v. Belden Min. Co.* (1888), 127 U. S. 379, 8 Sup. Ct. Rep. 1308, 32 Law ed. 246; *La Rue v. Grocinger* (1890), 84 Cal. 281, 24 Pac. 42, 18 Am. St. Rep. 179.

Koe Manufacturing Co., on January 5, 1923, a copy of which is hereto annexed as a part hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1922.

John Doe (L.S.).

In the presence of

John Jones,

[Annex Copy of Contract.]

No. 19.

Assignment of contract, with covenants by assignee to perform the contract and to deliver to assignor bond to secure performance.⁹

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called "the Assignor"), in consideration of one (\$1) dollar, paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the said Assignee all my right, title and interest in a certain contract made by me with the Koe Co., Inc., dated the 5th day of January, 1923, for the making of motion pictures.

And the said Assignee hereby covenants, as follows:

1. To assume and faithfully perform and discharge all the terms, covenants and obligations assumed, or to be performed or discharged, by the Assignor, under his said contract with the Koe Co., Inc.

2. To deliver to the Assignor, within ten (10) days from the date hereof, a bond executed by the Jones Surety Company, or by some other surety company of a like financial standing, in the principal sum of ten thousand (\$10,000) dollars, conditioned for the faithful performance and discharge by the Assignee, as aforesaid, of all terms, covenants, and obligations of the said contract.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, this 5th day of January, 1923.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

⁹ Adapted from *Helgar Corporation v. Warner's Features, Inc.* (1918), 222 N. Y. 449, 119 N. E. 113.

No. 20.**Assignment of contract of conditional sale by conditional vendor, with covenant of amount due.¹⁰**

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called "the Assignor"), in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the said Assignee all my right, title and interest in the certain contract of conditional sale, dated March 5, 1922, made by the Assignor and Henry Koe, and filed in the office of the register of the county of New York on March 5, 1922, at 10.30 A.M., together with all my right, title and interest in the property described therein, and in the debt, or obligation, secured thereby, and all moneys due, or which may grow due, thereon, with the interest.

And I, the said Assignor, covenant that there is now due to me upon said contract of conditional sale, without offset, or defense, of any kind, the principal sum of five thousand (\$5,000) dollars, with interest thereon, at the rate of five (5%) per cent per annum, from March 5th, 1922.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones.

No. 21.**Assignment of contract of conditional sale by conditional vendee.¹¹**

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the said Assignee all my right, title, and interest in the certain contract of conditional sale, dated March 5, 1922, made by the Assignor and Henry Koe, and filed in

¹⁰ Cf. *Bean v. Edge* (1885), 84 N. Y. 510.

¹¹ Cf. *Tweddle v. Clark* (1906), 114 App. Div. 296, 99 N. Y. Supp. 856.

the office of the register of the county of New York on March 5, 1922, at 10.30 A.M., together with all my right, title and interest in the property described therein.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

No. 22.

Assignment of copyright.¹²

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the said Assignee all my right, title and interest in the copyright of the certain literary work, entitled "My Man," and in all renewals and extensions of said copyright, which may be secured under the laws, now, or hereafter, in force and effect, in the United States, or in any other country or countries.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones,
Henry Koe.

No. 23.

Assignment of debt.¹³

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the said Assignee all my right, title and interest in the certain debt of one hundred (\$100) dollars due to me from Henry Koe, for moneys loaned by me on January 5,

¹² Cf. *New Fiction Pub. Co. v. Star Co.* (1915), 220 Fed. 994.

¹³ Cf. *Prindle v. Caruthers* (1857), 15 N. Y. 425.

1922, to the said Henry Koe, at his request, and upon his promise to repay the same to me on or before February 5, 1922.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

No. 24.

Assignment of dividends, with covenant by the assignor to pay an equivalent amount, upon transfer of his stock.¹⁴

KNOW ALL MEN, that I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City (herein called "the Assignor"), in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the said Assignee all my right, title and interest in all dividends, which are now due, or which may, on or before January 5, 1925, become due, upon one hundred (100) shares of the capital stock of the Koe Co., Inc., now owned by me.

And I, the said Assignor,

(a) represent that I am registered upon the transfer books of the Koe Co., Inc., as the holder of one hundred (100) shares of its capital stock; and

(b) covenant that if I shall, prior to January 5, 1925, sell, assign, transfer, or pledge, all, or any, of said shares of capital stock, or otherwise perform any act, or acts, which may, or shall, cause, or permit all, or any, of said shares of capital stock to be registered upon said transfer books in any name other than my own, that then, and in such event, I will pay to the Assignee, as and when any dividends shall be declared and paid by the Koe Co., Inc., prior to January 5, 1925, a sum equal to the dividends, which the Assignee would have received in respect of all of such shares of stock, if I had continued to be the registered holder thereof, until January 5, 1925.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

¹⁴ Cf. *Willis v. Lauridson* (1911), 161 Cal. 106, 118 Pac. 530.

No. 25.

Assignment of dower by heir.¹⁵

THIS INDENTURE, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Jane Doe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party is the son of Richard Doe, deceased, late of the County, City and State of New York, and the Second Party is the widow of the said Richard Doe; and

WHEREAS, the said Richard Doe died seized in fee simple of certain lands and tenements hereinafter more particularly described, which have descended to the First Party, subject, however, to the right of dower therein of the Second Party; and

WHEREAS, the parties hereto desire to admeasure the dower of the Second Party in the said lands and tenements:

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that the First Party does hereby endow and assign to the Second Party, and the Second Party agrees to receive and accept in full satisfaction of her right of dower, one-third of the lands and tenements of which the said Richard Doe died seized, which said one-third of such lands and tenements are more particularly bounded and described, as follows:

BEGINNING****

TO HAVE AND TO HOLD the said premises unto the Second Party, as aforesaid, for and during her natural life, in the name of dower, and in lieu, recompense and satisfaction of all dower, which the Second Party might, or could, have in the said lands and tenements, of which the said Richard Doe died seized.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Jane Doe (L.S.).

In the presence of

John Jones.

¹⁵ Cf. *White v. Spaulding* (1883), 50 Mich. 22, 14 N.W. 684; *Clark v. Muzzey* (1861), 43 N.H. 59; *Aickman v. Harsell* (1885), 98 N.Y. 186.

No. 26.

Assignment of dower by widow.¹⁶

KNOW ALL MEN, that—

WHEREAS, John Doe, late of the County, City and State of New York, died on or about January 2, 1922, seized in fee simple of certain real property; and

WHEREAS, JANE DOE, who resides at No. 11½ Broadway, in the Borough of Manhattan, New York City (herein called "the Assignor"), is the widow of the said John Doe; and

WHEREAS, in and by a decree of the Supreme Court of the State of New York, County of New York, dated September 5, 1922, and filed in the office of the clerk of said county on September 5, 1922, it was, among other things, adjudged and decreed that the said Assignor, as widow of John Doe, is entitled to dower in the real property of which the said John Doe died seized, situated in the County, City and State of New York, and described, as follows:

BEGINNING***

and

WHEREAS, in and by said decree, it was further adjudged and decreed that the gross annual rents and profits derived from the premises above described aggregate thirty-six thousand (\$36,000) dollars; that the annual disbursements in respect of said premises, including the interest upon the mortgage thereon, amount to twenty-four thousand (\$24,000) dollars, and that, in consequence, the net income therefrom amounts to twelve thousand (\$12,000) dollars; and

WHEREAS, in and by said decree, it was further adjudged and decreed that Henry Koe, as executor of the last will and testament of John Doe, deceased, should pay to the said Assignor one-third of the net annual income from said real property (which said one-third part thereof amounts to four thousand (\$4,000) dollars), in equal quarterly sums of one thousand (\$1,000) dollars, beginning on May 17, 1923; and

WHEREAS, the Assignor has agreed to transfer and convey the said dower and right of dower to Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"),

¹⁶ Adapted from *Conlon v. Marsh* (1922), 232 N. Y. 594, 134 N. E. 585.

NOW, THEREFORE, I, THE SAID ASSIGNOR, IN CONSIDERATION OF ONE (\$1) DOLLAR PAID BY THE ASSIGNEE, hereby grant, convey, transfer and set over to the Assignee all my said dower, right of dower, property, possession, claim and demand, so awarded to me by the aforesaid decree of said Supreme Court, dated September 5, 1922, and all moneys due, and which may grow due, thereunder, or therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

Jane Doe (L.S.).

In the presence of

John Jones.

No. 27.

Assignment of expectancy by prospective heir.¹⁷

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the said Assignee all my right, title and interest, both present and prospective, that I now have, or may hereafter have, by will, gift, or inheritance, in the estate, real and personal, of which Henry Koe, of the City and State of New York, may die seized or possessed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones.

No 28.

Assignment of interest under will admitted to probate.¹⁸

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the

¹⁷ Adapted from *In re Stephens* (1900), 64 N. Y. Supp. 990.

¹⁸ Adapted from *Brackett v. Seavey* (1912), 151 App. Div. 945, 136 N. Y. Supp. 1131.

Assignee"), hereby assign to the said Assignee all my right, title and interest in the estate of Henry Koe, deceased, late of New York City, under his last will and testament, which was duly admitted to probate by the Surrogates' Court, New York County, on January 5, 1921, and all interest of every name and nature therein and thereunder that I now have, or may hereafter acquire, or become vested with.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones.

No. 29.

Assignment of entire interest in invention, before the issue of letters patent—official form.¹⁹

WHEREAS, I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, City and State of New York, have invented a certain new and useful improvement in boilers, for which I am about to make application for letters patent of the United States; and

WHEREAS, Richard Roe, who resides at No. 37½ Broadway, Borough of Manhattan, City and State of New York, is desirous of acquiring an interest in said invention and in the letters patent to be obtained therefor:

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, be it known that, for and in consideration of the sum of five hundred (\$500) dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said John Doe, have sold, assigned, and transferred, and by these presents do sell, assign, and transfer, unto the said Richard Roe the full and exclusive right to the said invention, as fully set forth and described in the specification prepared and executed by me on the 5th day of January, 1923, preparatory to obtaining letters patent of the United States therefor; and I do hereby authorize and request the Commissioner of Patents to issue the said letters patent to the said Richard Roe as the assignee of my entire right, title and interest in and to the same, for the sole use and behoof of the said Richard Roe and his legal representatives.

¹⁹ Adopted by the United States Patent Office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones,

Henry Koe.

No. 30.

Assignment of entire interest in letters patent—official form.²⁰

WHEREAS, I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, City and State of New York, did obtain letters patent of the United States for an improvement in boilers, which letters patent are numbered A.87654, and bear date the 5th day of January, in the year 1922; and

WHEREAS, I am now the sole owner of said patent and of all rights under the same; and

WHEREAS, Richard Roe, who resides at No. 371½ Broadway, Borough of Manhattan, City and State of New York, is desirous of acquiring the entire interest in the same:

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, be it known that, for and in consideration of the sum of five hundred (\$500) dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said John Doe, have sold, assigned, and transferred, and by these presents do sell, assign, and transfer, unto the said Richard Roe the whole right, title and interest in and to the said improvement in boilers and in and to the letters patent therefor aforesaid; the same to be held and enjoyed by the said Richard Roe, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which the said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal at the Borough of Manhattan, in the City of New York, and State of New York, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones,

Henry Koe.

²⁰ Adopted by the United States Patent Office.

No. 31.

Assignment of undivided interest in letters patent—official form.²¹

WHEREAS, I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, City and State of New York, did obtain letters patent of the United States for an improvement in boilers, which letters patent are numbered A.87564, and bear date the 5th day of January, in the year 1920; and

WHEREAS, Richard Roe, who resides at No. 37½ Broadway, Borough of Manhattan, City and State of New York, is desirous of acquiring an interest in the same:

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, be it known that, for and in consideration of the sum of five hundred (\$500) dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said John Doe, have sold, assigned, and transferred, and by these presents do sell, assign, and transfer, unto the said Richard Roe, the undivided one-half part of the whole right, title and interest in and to the said invention and in and to the letters patent therefor aforesaid; the said undivided one-half part to be held and enjoyed by the said Richard Roe, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal at the Borough of Manhattan, in the City of New York, and State of New York, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones.

Henry Koe.

²¹ Adopted by the United States Patent Office.

No. 32.

Assignment of entire interest in letters patent, subject to reservation of personal license by the assignor.²²

KNOW ALL MEN that,

WHEREAS, I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, County of New York, State of New York, did obtain letters patent of the United States for an improvement in boilers, which letters patent are numbered A.87654, and bear date the 5th day of January, 1918; and

WHEREAS, I, the said John Doe, am now the sole owner of said letters patent and of all rights under the same; and

WHEREAS, Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, City of New York, and State of New York (herein called "the Assignee"), is desirous of acquiring the entire interest in the same, subject to the license hereinafter mentioned:

NOW, THEREFORE, KNOW ALL MEN, that in consideration of the sum of five hundred (\$500) dollars in hand paid by the said Assignee, the receipt whereof is hereby acknowledged, I, the said John Doe, hereby sell, assign and transfer to the said Assignee the whole right, title and interest in and to the said invention and in and to the letters patent therefor aforesaid (subject, nevertheless, to the license hereinafter mentioned); the same to be held and enjoyed by the said Assignee, and his legal representatives, to the full end of the term for which the said letters patent are, or may be, granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

This assignment is made, however, subject to the following express condition, to which the said Assignee assents by the acceptance hereof, or by doing any act in accordance therewith, to wit: I hereby save and reserve to myself the unrestricted personal right and license (which right and license I may exercise and make use of in person, or through and by my duly authorized agent) to contract for, make, erect, design, and sell in any part of the United State, or the territories thereof, boilers embodying the said invention, or improvement, described and set forth in letters patent numbered A.87654, without the payment of royalty, or license fees,

²² Adapted from *Lock Joint Pipe Co. v. Melber* (1916), 234 Fed. Rep. 319, 148 C. C. A., 221.

of any kind whatever; it being expressly understood and agreed that this license shall not be assignable to any other person or corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal at the Borough of Manhattan, in the County of New York, and State of New York, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones,

Henry Koe,

No. 33.

Assignment of territorial interest in letters patent after grant of patent—official form.²³

WHEREAS, I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, did obtain letters patent of the United States for an improvement in boilers, which letters patent are numbered A.876554, and bear date of the 5th day of January, 1922; and

WHEREAS, I am now the sole owner of said patent and of all rights under the same in the below recited territory; and

WHEREAS, Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, is desirous of acquiring an interest in the same:

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, be it known that, for and in consideration of the sum of five hundred (\$500) dollars to me in hand paid, the receipt whereof is hereby acknowledged, I, the said John Doe, have sold, assigned, and transferred unto the said Richard Roe, all the right, title and interest in and to the said inventions, as secured to me by said letters patent, for, to and in the state of New York, and for, to, or in no other place or places; the same to be held and enjoyed by the said Richard Roe within and throughout the above specified territory, but not elsewhere, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are, or may be, granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

²³ Adopted by the United States Patent Office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal at the Borough of Manhattan, in the County of New York, and State of New York, on this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones,

Henry Koe.

No. 34.

Assignment of judgment, with covenants of amount due and freedom from attorney's lien.²⁴

KNOW ALL MEN, that I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City (herein called "the Assignor"), in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the Assignee all my right, title and interest in a certain judgment obtained by me against Henry Koe, in the sum of one thousand (\$1,000) dollars, which was duly docketed in the office of the clerk of the county of New York, on January 5, 1923.

And I, the said Assignor, covenant:

1. That there is now due to me upon said judgment, without offset or defense of any kind, the sum of one thousand (\$1,000) dollars, with interest from January 5, 1923.

2. That the said sum is free from the lien, or liens, of any attorney or attorneys.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones.

No. 35.

Assignment of lease—statutory form.²⁵

Know that John Doe, Assignor, in consideration of one (\$1) dollar, paid by Richard Roe, Assignee, hereby assigns unto the Assignee, a certain lease made by Henry Koe to John Doe, dated

²⁴ Cf. *In re Gates* (1900), 51 App. Div. 350, 64 N. Y. Supp. 1050, 31 N. Y. Civ. Proc. 88.

²⁵ Adapted from *New York Laws, 1917*, Ch. 681, Sec. 1.

the 5th day of January, 1921, and recorded on the 6th day of January, 1921, in the office of the register of the county of New York, in liber 50A of conveyances, at page 20, covering premises 99½ Broadway, Borough of Manhattan, New York City, together with the premises therein described, and the buildings thereon, with the appurtenances.

TO HAVE AND TO HOLD the same unto the Assignee, Richard Roe, and assigns, from the 5th day of January, 1923, for all the remainder of the term of five years mentioned in the said lease, subject to the rents, covenants, conditions and provisos therein also mentioned.

And the Assignor hereby covenants that the said assigned premises are free from encumbrances.

IN WITNESS WHEREOF, the Assignor has hereunto set his hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

No. 36.

Assignment of life insurance policy, with covenants and power of attorney.²⁶

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called "the Assignor"), in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the said Assignee all my right, title and interest in the policy of life insurance, numbered 459, issued by the Koe Life Insurance Company of New York, together with all moneys, dividends, interest, benefits, and advantages whatsoever, now, or which may hereafter become, due, by virtue thereof.

And I, the said Assignor, covenant, as follows:

1. That the aforesaid policy of life insurance belongs to me, and is free and clear from all liens.

2. That I have made no other transfer, or assignment, of, nor executed, or delivered, any power of attorney in respect of, the said policy of life insurance.

²⁶ Adapted from *Aaron v. Black* (1918), 222 N. Y. 620, 118 N. E. 1050,

3. That no proceedings in bankruptcy, or insolvency, have ever been instituted by, or against, me, nor is any such proceeding now pending.

4. That I will, from time to time, at the expense of the Assignee, make, execute, or cause to be made, or executed, such reasonable assurances, acts and instruments as may be requested by such Assignee for the more effectual confirmation of this assignment.

5. That I will forever warrant and defend the Assignee's title to the aforesaid policy of life insurance.

And I, the said Assignor, hereby, irrevocably, appoint the said Assignee my attorney, with full power of substitution and revocation, in my name, or otherwise, but at his own proper cost:

(a) To institute any proceedings, which may be proper, or necessary, for the recovery and collection of any moneys, which may be, or shall become, due, under the aforesaid policy of life insurance;

(b) To discharge, receipt for, compound, or release, any claims on the said policy of life insurance, and to execute, acknowledge and deliver any instruments in furtherance thereof;

(c) To endorse, in my name, any check, draft, or other instrument, given in payment, or in liquidation, of any claim on the said policy of life insurance; and

(d) To perform every other act and thing in and about the premises.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones.

No. 37.

Assignment of mechanic's lien.²⁷

KNOW ALL MEN, that I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City, in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the

²⁷ Cf. *Clarkson v. Louderback* (1895), 36 Fla. 660, 19 So. 887; *Jenckes v. Jenckes* (1896), 145 Ind. 624, 44 N.E. 632; *Davis v. Fidelity & Deposit Co.* (1902), 75 App. Div. 518, 78 N.Y. Supp. 336.

Assignee"), hereby assign to the Assignee all my right, title and interest in the certain mechanic's lien for the sum of ten thousand (\$10,000) dollars, of which a notice was filed in the office of the clerk of the County of New York on January 5, 1923, against the following real property:

ALL that certain lot, piece or parcel of land, situate in the Borough of Manhattan, New York City, and bounded and described, as follows:—

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together with all moneys due, or which may grow due, thereunder.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

No. 38.

Assignment of moneys deposited in escrow.²⁸

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the said Assignee all my right, title and interest in the sum of four thousand (\$4,000) dollars which was deposited by me with the Koe Trust Company of New York, pursuant to the terms of a written agreement executed on the 10th day of March, 1922 (a copy of which is hereto annexed and made a part hereof).

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

[Annex Copy of Agreement.]

²⁸ Adapted from *Gould v. Fleitmann* (1920), 230 N. Y. 569, 130 N. E. 897.

No. 39.**Assignment of mortgage, with covenant—statutory form.²⁹**

KNOW that John Doe, Assignor, in consideration of one hundred (\$100) dollars, paid by Richard Roe, Assignee, hereby assigns unto the Assignee, a certain mortgage made by Henry Koe, given to secure payment of the sum of five thousand (\$5,000) dollars and interest, dated the 5th day of January, 1922, and recorded on the 5th day of January, 1922, in the office of the register of the county of New York, in liber 97 of mortgages, at page 74a, covering premises No. 97½ Broadway, Borough of Manhattan, New York City, together with the bond or obligation described in said mortgage, and the moneys due and to grow due thereon with the interest.

TO HAVE AND TO HOLD the same unto the Assignee, and to the successors, legal representatives and assigns of the Assignee forever.

And the Assignor covenants that there is now owing upon said mortgage, without offset or defense of any kind, the principal sum of five thousand (\$5,000) dollars, with interest thereon at six (6%) per centum per annum from the 5th day of July, 1922.

IN WITNESS WHEREOF, the Assignor has hereunto set his hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

No. 40.**Assignment of mortgage without covenant—statutory form.³⁰**

KNOW that John Doe, Assignor, in consideration of one hundred (\$100) dollars paid by Richard Roe, Assignee, hereby assigns unto the Assignee, a certain mortgage made by Henry Koe, given to secure payment of the sum of five thousand (\$5,000) dollars and interest, dated the 5th day of January, 1922, and recorded on the 5th day of January, 1922, in the office of the register of the county of

²⁹ Adapted from *New York Laws, 1917*, Ch. 681, Schedule O.

³⁰ Adapted from *New York Laws, 1917*, Ch. 681, Schedule N.

New York, in liber 97 of mortgages, at page 74a, covering premises No. 97½ Broadway, Borough of Manhattan, New York City, together with the bond or obligation described in said mortgage, and the moneys due and to grow due thereon with the interest,

TO HAVE AND TO HOLD the same unto the Assignee, and to the successors, legal representatives and assigns of the Assignee forever.

IN WITNESS WHEREOF, the Assignor has hereunto set his hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones.

No. 41.

Assignment of non-exempt property to receivers of a corporation, with covenant to execute additional instruments.³¹

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, in consideration of one (\$1) dollar paid by Richard Roe and John Roe, as Receivers of Koe, Inc., a corporation, and of its properties, duly appointed under a certain order of the United States District Court for the Southern District of New York, dated December 13, 1922, in a proceeding in equity pending in said court, entitled John Brown, complainant, against Koe, Inc., defendant, and duly entered in the office of the clerk of said court on December 13, 1922, and their survivor, successor or successors, substitute or substitutes, and such other person or persons as may be appointed co-receiver or co-receivers with them, and may qualify and act as such (herein called "the Assignees"), hereby assign to the said Assignees all my right, title and interest in all my property, assets and estate of every sort and description, and wheresoever situated, excepting from this assignment the following:

(a) All property, assets and estate of every sort and description which may be exempt from execution under the laws of the State of New York; and

(b) All my right, title and interest in two certain policies of insurance, heretofore issued upon my life,—one, bearing No. 690, for ten thousand (\$10,000) dollars, issued by the Brown Insurance Company of Boston, Massachusetts, and the other, bearing No.

³¹ Adapted from *Martindale v. DeKay* (1918), 224 N. Y. 585, 120 N. E. 869.

1700, for five thousand (\$5,000) dollars, issued by the Green Insurance Company, of Worcester, Massachusetts.

TO HAVE AND TO HOLD all and singular the said property, estate and assets hereby assigned, or intended so to be, and all my estate, right, title and interest therein and thereto unto the said Assignees, their successors, assigns and transferees forever.

And I, the said Assignor, hereby covenant and agree to execute and deliver such further instruments, and to do, or cause to be done, all acts and things that may be requested by the said Assignees, for the purpose of effectuating and carrying out the intents and purposes of this instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of _____
John Jones.

No. 42.

Assignment of part of the principal sum of a mortgage.³²

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the Assignee, out of a certain mortgage made by Henry Koe, given to secure the payment of the sum of fifty thousand (\$50,000) dollars, and interest, dated the 5th day of January, 1923, and recorded on the 5th day of January, 1923, in the office of the register of the county of New York, in liber 97 of mortgages, page 74a, covering premises No. 97½ Broadway, Borough of Manhattan, New York City, the net sum of twenty thousand (\$20,000) dollars, with the interest thereon, together with the bond, or obligation, described in said mortgage, to the extent of twenty thousand (\$20,000) dollars, with the interest thereon.

TO HAVE AND TO HOLD the same to the Assignee, and to the successors, legal representatives and assigns of the Assignee, forever.

³² Cf. *Mechanics' Bank v. Bank of Niagara* (1832), 9 Wend. (N. Y.) 410.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

In the presence of

John Jones. John Doe (L.S.).

No. 43.

Assignment of option upon condition that assignee shall perform.³³

KNOW ALL MEN, that—

WHEREAS, a certain option agreement was made and delivered on the 3rd day of January, 1923, by Doe Co., a corporation, organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City, to Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (which agreement is hereto attached, and, by reference thereto, is now hereby made a part hereof); and

WHEREAS, in said agreement, it is, among other things, provided that said agreement may be assigned by the said Richard Roe, and that, when so assigned, said agreement, and all of its parts and provisions, shall inure to the benefit, and shall run in favor of, and be obligatory upon, such assignee, with the same force and effect as though such assignee had originally been made a party thereto, and that, in case of such assignment by said Richard Roe, all of his rights, as well as all of his obligations, thereunder, whatsoever the same may be, shall forthwith cease and terminate:

NOW, THEREFORE, in consideration of the sum of one (\$1) dollar paid by Henry Koe, residing at No. 57½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), the receipt whereof is hereby acknowledged, I, the said Richard Roe, hereby transfer and assign to the said Assignee, all my right, title and interest in the said annexed agreement, upon the express proviso and condition, however, that said Assignee shall assume, and agree to perform all of the obligations, whatsoever the same may be, created by said agreement against me, the said Richard Roe.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

Richard Roe (L.S.).

In the presence of

John Jones.

[Annex Copy of Option.]

³³ Adapted from *Corn Products Refining Co. v. U. S.* (1919), 249 U. S. 621, 39 Sup. Ct. Rep. 291, 63 Law ed. 805.

No. 44.

Assignment of pledge by pledgor.³⁴

THIS AGREEMENT, made January 5, 1923, by John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called "the Assignor"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), WITNESSETH:

WHEREAS, the Assignor is the owner of fifty (50) shares of the common stock of Koe Company, Inc., each of the par value of one hundred (\$100) dollars, all fully paid and non-assessable; and

WHEREAS, the Assignor heretofore pledged and delivered all of said fifty shares of stock to John Jones, to secure the payment of a promissory note, made by the Assignor, to the order of said John Jones, for the sum of five thousand (\$5,000) dollars, with interest thereon at six (6%) per cent per annum from December 1, 1922; and

WHEREAS, no part of said note, or the interest thereon, has been paid, and the Assignor desires to assign all of his right, title and interest in the said fifty shares of stock to the Assignee herein:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, as follows:

1. That the Assignor hereby assigns to the Assignee all the right, title and interest of the Assignor

(a) in said fifty shares of common stock of Koe Company, Inc., represented by certificate No. 1000 for thirty shares of said stock, and certificate No. 1001 for twenty shares of said stock, which said shares of stock are, as aforesaid, pledged to, and held by, John Jones;

(b) in all dividends, incomes, and issues therefrom, and all rights of pre-emption, or other rights, thereto attached;

(c) to pay and discharge (but at the Assignee's own cost) the amount of the said pledgee's claim aforementioned;

(d) to redeem the said shares of stock pledged as aforesaid;

(e) to all causes of action, which have accrued, or may hereafter accrue, for, or by reason of, any conversion of the said shares of stock, or any of them, by the said pledgee, or by any other person or persons.

³⁴ Cf. *Whitaker v. Sumner* (1838), 37 Mass. 399; *Duell v. Cudlysp* (1856), 1 Hill. (N. Y.), 166.

2. That the Assignee hereby accepts this assignment and shall, contemporaneously with the execution thereof, pay to the Assignor the sum of forty-five hundred (\$4,500) dollars.

3. That the Assignor hereby appoints the Assignee his attorney, for the purpose of transferring said shares of stock upon the transfer books of Koe Company, Inc., with full power of substitution in the premises, as, if and when the Assignee shall acquire possession of said shares of stock, or the certificate, or certificates, therefor.

4. That the Assignor shall notify the Assignee promptly, by registered mail, addressed to the Assignee, of the time and place of any sale, or of any notice of sale, which the Assignor may receive, in respect of said shares of stock pledged as aforesaid, or any of them.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of
John Jones.

No. 45.

Assignment of pledge by pledgee, with covenants of securities pledged and amount due.³⁵

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called "the Assignor"), in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the said Assignee all my right, title and interest in the stock and bonds pledged with me, the said Assignor, by Henry Koe, on or about January 3, 1923, to secure the payment to me of the sum of five thousand (\$5,000) dollars, with interest thereon at the rate of six (6%) per cent per annum from January 3, 1923, together with the debt, or obligation, of the said Henry Koe in respect of which said stock and bonds were pledged, and all moneys due, or which may grow due, in connection therewith, with the interest.

And I, the said Assignor, covenant (1) that a true list of the said stock and bonds, pledged as aforesaid, is set forth in the annexed schedule, marked "Exhibit A," and (2) that there is now

³⁵ Cf. *McNeil v. Tenth National Bank* (1871), 46 N. Y. 325, 7 Am. Rep. 341.

due to me from the said Henry Koe, without offset or defense of any kind, the sum of five thousand (\$5,000) dollars, with interest thereon, at the rate of six (6%) per cent per annum from January 3, 1923.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

[Annex List of Securities.]

No. 46.

Assignment of stock certificate.³⁶

For value received, I hereby sell, assign and transfer, to John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, fifty (50) shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint,^{36a} my attorney to transfer the said stock on the books of the within named company, with full power of substitution in the premises.

Dated, New York, January 5, 1922.

Richard Roe.

In the presence of
John Jones.

No. 47.

Assignment of subscription for stock, with representations by assignor.³⁷

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called "the Assignor"), in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New

³⁶ Cf. *Johnston v. Laffin* (1880), 103 U. S. 800, 26 Law ed. 532.

^{36a} This space customarily is left blank by the assignor or transferrer as the proper corporate official, as an incident to the transfer, will insert his own name therein.

³⁷ Cf. *Valentine v. Berrin Springs Water Power Co.* (1901), 128 Mich. 280, 87 N. W. 373. See *New York Consol. Laws* (1909), Ch. 59, Sec. 53.

York City (herein called "the Assignee"), hereby assign to the said Assignee all my right, title and interest in the contract of subscription to ten (10) shares of the common stock of Koe Co., Inc., entered into by me with the said Koe Co., Inc., on March 5, 1922.

And I, the said Assignor, for the purpose of inducing the said Assignee to accept this assignment, do hereby make the following representations:

1. That the amount of such subscription is payable in cash.
2. That, at the time of entering into such contract of subscription, the Assignor paid to the directors of the Koe Co., Inc., ten (10%) per cent upon the amount of such subscription.
3. That such subscription is valid and in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

No. 48.

Assignment of vendor's lien, with covenant of amount due.³⁸

KNOW ALL MEN, that I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City (herein called "the Assignor"), in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the Assignee all my right, title and interest in

(a) the certain contract entered into by me with Henry Koe, residing at No. 57½ Broadway, Borough of Manhattan, New York City, on December 5, 1922, a copy of which is hereto annexed as a part hereof;

(b) all moneys due, or which may grow due, thereunder; and

(c) my lien for the unpaid purchase price of the land therein described.

And I, the said Assignor, covenant that there is now due to me from the said Henry Koe, under the said contract, without offset or defense of any kind, the sum of five thousand (\$5,000) dollars, with interest from December 5, 1922.

³⁸ Cf. *Smith v. Smith* (1870), 9 Abb. Pr. (N. S.) 420, 1 Sheld. (N. Y.) 238.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

[Annex Copy of Contract.]

No. 49.

Assignment of wages due.³⁹

KNOW ALL MEN, that I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City, in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 371½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the said Assignee all my right, title and interest in the moneys due to me from Henry Koe, for work, labor and services as a clerk performed by me, between January 5, 1921, and January 31, 1922, which services were performed, at the request of the said Henry Koe, and were of the agreed value of five hundred (\$500) dollars.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

No. 50.

Assignment of wages to become due.⁴⁰

KNOW ALL MEN, that I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City, in consideration of one (\$1) dollar paid by Richard Roe, residing at No. 371½ Broadway, Borough of Manhattan, New York City (herein called "the Assignee"), hereby assign to the said Assignee all my right, title and interest in the moneys, which shall become due to me from Henry Koe, for the work, labor and services that I may hereafter

³⁹ Cf. *Lord v. Wapato Irr. Co.* (1914), 81 Wash. 561, 142 Pac. 1172.

⁴⁰ Cf. *Low v. Pew* (1871), 108 Mass. 347, 11 Am. Rep. 357.

perform, between January 5, 1923, and February 1st, 1923, under my contract with the said Henry Koe.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones.

SECTION 2.—MISCELLANY

No. 51.

Acceptance of assignment of contract and assumption of its obligations by assignee.⁴¹

KNOW ALL MEN, that Doe Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City, in consideration of one (\$1) dollar paid by Richard Roe & Co., Inc., and of the consent of the said Richard Roe & Co., Inc., to the foregoing assignment, hereby accepts the foregoing assignment by Koe & Co., Inc., to it of the contract in said assignment mentioned and described, between Richard Roe & Co., Inc., and Koe & Co., Inc., and of its rights, titles, and interests accrued, or to accrue, in, to, and under, the said contract, subject, nevertheless, as in the said assignment provided, to all the terms, provisions and conditions of the said contract and its specifications, and to all and singular the rights, titles, interests, claims, counter-claims, demands, set-offs, and defenses whether heretofore accrued, or hereafter to accrue, of Richard Roe & Co., Inc., and of any other corporation, person, or party, in, to, and under, the said contract: and the said Doe Co., Inc., does hereby unconditionally and irrevocably assume the obligations of the said contract and its specifications, and of the bonds furnished by Koe & Co., Inc., to Richard Roe & Co., Inc., pursuant to the said contract, as well as any and all obligations and liabilities of the said Koe & Co., Inc., and of Doe Co., Inc., heretofore accrued and that may hereafter accrue, under and in connection with the said contract, or the performance, or failure of performance, thereof, equally and effec-

⁴¹ Adapted from *Frederick Snare Corp. v. Globe Indemnity Co.* (1922), 194 N. Y. Supp. 353.

tually in all respects, as if Doe Co., Inc., had been originally, and at all times hereafter, the second party to said contract and the principal to the said bonds, in the place and stead of Koe & Co., Inc., and as if any and all acts, omissions or defaults of the said Koe & Co., Inc., to the date hereof, had been the acts, omissions, or defaults of Doe Co., Inc.

IN WITNESS WHEREOF, Doe Co., Inc., has caused this instrument to be signed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, this 5th day of January, 1923.

Doe Co., Inc.,

By John Doe,

President.

(Seal)

Attest:

John Jones,

Secretary.

No. 52.

Assumption of obligations of lease by assignee.⁴²

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, in consideration of the foregoing assignment and of the consent thereto of the lessor, hereby assume the lease described in said assignment, and agree to make all the payments, which are to be made thereunder, and otherwise to perform and abide by all the terms, provisions and obligations of the lessee under the said lease.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones.

⁴² Cf. *Mayor, etc., of New York v. Wylie* (1887), 43 Hun. 547; aff'd., (1890), 122 N. Y. 663, 26 N. E. 754.

No. 53.

**Condition terminating assignment of policy of life insurance,
upon prior death of assignee.**⁴³

This assignment, however, shall become null and void, if the said Assignee shall die, prior to the time when the principal sum of said policy of life insurance shall have become due and payable.

No. 54.

Consent to assignment of contract.⁴⁴

KNOW ALL MEN, that the Doe Manufacturing Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City, in consideration of one (\$1) dollar paid by Richard Roe, hereby consents to the foregoing assignment to the Assignee therein named, of its contract with Henry Koe, dated January 5, 1923, subject, however, to the covenants, conditions and terms set forth in said contract.

IN WITNESS WHEREOF, the Doe Manufacturing Co., Inc., has caused this instrument to be signed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, this 5th day of January, 1923.

Doe Manufacturing Co., Inc.,

By John Doe,

President.

(Seal)

Attest:

John Jones,

Secretary.

⁴³ Adapted from *Gould v. Fleitmann* (1920), 230 N. Y. 569, 130 N. E. 897.

⁴⁴ Cf. *City of Omaha v. Standard Oil Co.* (1898), 55 Nebr. 337, 75 N. W. 859.

No. 55.

Consent of landlord to assignment of lease, conditioned upon assignor and assignee continuing liable and that no further assignment, or subletting, be made.⁴⁵

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, hereby consent to the foregoing assignment of my lease with Richard Roe, upon the express condition, however, that both the Assignor and the Assignee therein named shall continue liable for the prompt payment of the rent and for the performance of all other obligations of the lessee under the said lease, and that no further assignment of said lease, or any subletting of the premises let under said lease, shall hereafter be made.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

No. 56.

Power of attorney to be included in assignment—short form.⁴⁶

And I, the said Assignor, hereby give the said Assignee full authority, for his own benefit, but at his own expense, to demand, collect, compound, and give acquittance for the same, or any part thereof, as well as, in my name, or otherwise, to institute, prosecute and withdraw any action, or proceeding, therefor, whether in law or in equity.

No. 57.

Power of attorney to be included in assignment—long form.⁴⁷

And I, the said Assignor, hereby irrevocably appoint the said Assignee my attorney, in my name, place and stead, but at his own

⁴⁵ Cf. *Springer v. Chicago R. E. L. & T. Co.* (1903), 202 Ill. 17, 66 N. E. 850.

⁴⁶ Cf. *Farrell v. Passaic Water Co.* (1913), 82 N. J. Eq. 97, 88 Atl. 627; *Wood v. Kerkeslager* (1909), 225 Pa. St. 296, 74 Atl. 174.

⁴⁷ Cf. *In re Stiger* (1913), 202 Fed. Rep. 791.

expense, to ask, sue for, attach, levy, recover, and receive all moneys now, or hereafter, due, owing and payable upon, or under, the chose in action hereinbefore assigned, hereby giving full power and authority to my said attorney to perform any act necessary, or expedient, for that purpose, as fully as I, the said Assignor, might, or could, do, if personally present, with power of substitution and revocation; and I, the said Assignor, hereby ratify and confirm all that my said attorney, or his substitute, shall lawfully do, or cause to be done, by virtue hereof.

No. 58.

Reservation by assignor of dividends payable on an assigned policy of life insurance.⁴⁸

This assignment, however, is subject to the reservation that, during the Assignor's lifetime, all dividends and cash payments (other than any cash surrender value), which may hereafter mature, or become payable, upon said policy of life insurance, shall belong to and be received by the Assignor.

⁴⁸ Adapted from *Gould v. Fleitmann* (1920), 230 N. Y. 569, 130 N. E. 897.

CHAPTER III

BAILOR AND BAILEE

- No. 59—Charter of a vessel.
No. 60—Agreement to consign merchandise for sale, whereunder consignee is to account for net proceeds of sales and return any unsold merchandise.
No. 61—Agreement for hire of automobile and services of chauffeur for definite period.
No. 62—Agreement for hire of manufacturing plant, with option to purchase.
No. 63—Agreement for hire of team of horses.
No. 64—Agreement for pasturage of cattle.

No. 59.

Charter of a vessel.¹

THIS CHARTER PARTY, made and concluded upon in the City of New York, on the 5th day of January, 1923, between the Doe Transportation Co., agents of the Schooner *Sea Dog*, of the burden of seven thousand tons, or thereabouts, register measurements, now lying in the Harbor of New York (herein called "the First Party"), and Roe Oil Co. (herein called "the Second Party"),
WITNESSETH:

That the First Party agrees in the freight and charter of the whole of said vessel (with the exception of the cabin and necessary room for the crew, and the storage of provisions, sails and cables) unto the Second Party, for the voyage from Carteret, New Jersey, and Jacksonville, Florida, to Azua, Dominican Republic, upon the following terms:

The said vessel shall be tight, staunch, strong, and in every way fitted for such voyage, and receive on board, during the aforesaid voyage, the merchandise hereinafter mentioned.

¹ Cf. *Davison v. Von Lingen* (1885), 113 U. S. 40, 5 Sup. Ct. Rep., 346, 28 Law ed. 885; *China Mut. Ins. Co. v. Force* (1894), 142 N. Y. 90, 36 N. E. 874.

The Second Party does engage to provide and furnish to the said vessel deck cargo, as per attached list, together with any other suitable cargo, but excluding explosives (charterers to have privilege of loading lumber on deck at Jacksonville, but not in excess of what the vessel can safely stow and carry), and to pay to the said First Party, or agent, for the use of said vessel, during the voyage aforesaid, the lump sum of four thousand (\$4,000) dollars—twenty-six hundred (\$2,600) dollars thereof, payable upon the signing of the bills of lading at Carteret, New Jersey, and to be considered earned, retained and irrevocable, vessel and/or cargo lost, or not lost, and the balance of fourteen hundred (\$1400) dollars, payable on signing of bills of lading at Jacksonville, Florida, and to be considered earned, retained, and irrevocable, vessel and/or cargo lost, or not lost.

Charterers to load, stow and discharge cargo free of expense to vessel, and pay her wharfage charges, if any, while under this charter. Inward and outward port charges at Jacksonville to be for vessel's account. Second Party to pay all towages at Jacksonville, if any. Inward port charges at San Domingo to be for account of charterers.

It is agreed (if not sooner dispatched) the lay days for loading and discharging shall be, as follows: commencing from the time the vessel is ready to receive, or discharge, cargo, and notice thereof given to the Second Party, or their agents, ten days in all, Sundays and legal holidays excepted, are to be allowed charterers and their agents for loading and discharging.

For each and every day's detention, beyond said time, by default of the said Second Party, or agent, one hundred and fifty (\$150) dollars per day, day by day, shall be paid by said Second Party, or agent, to said First Party, or agent. The cargo, or cargoes, to be received and delivered alongside, within reach of the vessel's tackles.

It is understood that the vessel is now here about ready, but, should she not report under this charter by January 20, 1923, charterers to have privilege of cancelling this charter.

Vessel to report to Messrs. Koe & Roe, at Jacksonville, Florida. The dangers of the sea and navigation of every nature and kind to be mutually excepted.

Commission of two and one-half ($2\frac{1}{2}\%$) per cent, upon the amount of this charter, primage and demurrage, payable by the ves-

sel to Roe & Co., Inc., and upon receiving of freight on signing thereof, and on subsequent renewals.

To the true and faithful performance of all and every part of the foregoing agreement, we, the said parties, do hereby bind ourselves, our heirs, executors, administrators and assigns, and also the said vessel, freight, tackle and appurtenances, and the merchandise to be laden on board, each to the other, in the penal sum of the estimated amount of damages, which sum shall be taken as the liquidated damages for any nonperformance or violation of the terms, conditions or covenants in the foregoing charter party contained.

Doe Transportation Co.,

By John Doe,
Treasurer.

Roe Oil Co.,

By Richard Roe,
President.

We certify the foregoing to be a true copy of the original charter party on file in our office.

Roe & Co., Inc.,
By Thomas Roe,
President.

[Annex Cargo List.]

No. 60.

Agreement to consign merchandise for sale, whereunder consignee is to account for net proceeds of sales and return any unsold merchandise.²

AGREEMENT, made January 5, 1923, between Doe Co., a corporation, duly organized under the laws of the State of New York, and having a place for the transaction of business at No. 11½ Broadway, Boston, Massachusetts (herein called the "First Party"), and the Roe Woolen Co., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

² Adapted from *Ludrigh v. American Woolen Co.* (1913), 231 U. S. 552, 34 Sup. Ct. Rep. 161, 58 Law ed. 345.

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The First Party agrees to deliver to the Second Party, from time to time, such goods, wares and merchandise as it, in its judgment, may see fit, and the Second Party agrees to receive and accept possession of the said goods, wares and merchandise, upon the terms and conditions hereinafter stated.

2. The Second Party agrees to receive and accept possession of such goods, wares and merchandise from the First Party, and to hold and care for the same as the property of the First Party; it being expressly agreed that the title to said goods, wares and merchandise, or to the proceeds thereof, shall always be vested in the First Party, and such merchandise shall be, at all times, subject to, and under, the direction and control of the First Party. The title to the said goods, wares and merchandise shall pass directly from the First Party to such person, or persons, to whom the same shall be sold, in the manner and upon the terms herein set forth.

3. The Second Party shall keep said goods, wares and merchandise fully insured, for the benefit of, and in the name of, the First Party, in a solvent fire insurance company approved of by the First Party.

4. The Second Party agrees to:

(a) Sell such goods, wares and merchandise to such person, or persons, as it shall judge to be of good credit and business standing; and

(b) Collect for, and in behalf of, the First Party, all bills and accounts for the goods, wares and merchandise so sold; and

(c) Immediately pay to the First Party any amount collected as aforesaid, immediately upon its collection, minus, however, the difference between the price at which the goods, wares and merchandise so collected for shall have been invoiced to the Second Party and the price at which said goods, wares and merchandise shall have been sold as aforesaid by the Second Party.

5. The Second Party hereby guarantees the payment of all bills and accounts for goods, wares and merchandise, possession of which may be delivered to it hereunder; and it hereby agrees that, if any goods, wares and merchandise delivered hereunder by the First Party to the Second Party shall not be accounted for to the First Party, in accordance with the provisions of clause "4" of this agreement, it will pay to the First Party the invoice price of said goods, wares and merchandise, and thereupon the title to said

goods, wares and merchandise, so paid for, or to the proceeds thereof, shall vest in the Second Party, and be exempt from the provisions of this agreement.

6. The invoices sent by the First Party to the Second Party shall be subject to the usual trade discounts allowed by the First Party.

7. That, except in the State of Montana, and in the City of Elmira, State of New York, the First Party shall not, during the continuance of this agreement, engage in the merchandizing of fabrics in any manner, except as herein provided.

8. The Second Party shall execute any and all other documents, which the First Party shall deem advisable, in order to carry out the purposes of this agreement.

9. This agreement shall continue for one year. If the Second Party shall breach any of the agreements herein contained, the First Party, at its option, may forthwith terminate this agreement. If, for any reason, this agreement shall be terminated, all merchandise, possession of which shall be held by the Second Party under this agreement, shall be returned to the possession of the First Party, immediately upon said termination.

IN WITNESS WHEREOF, the First Party has caused this agreement to be executed in its behalf by John Doe, its Treasurer, thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary, and the Second Party has caused this instrument to be executed in its behalf by Richard Roe, its President, thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary, the day and year first above written.

Doe Co.,

By John Doe,

(Seal) Treasurer.

Attest:

John Jones,

Secretary.

Roe Woolen Co.,

By Richard Roe,

(Seal) President.

Attest:

Henry Koe,

Secretary.

No. 61.

Agreement for hire of automobile and services of chauffeur for definite period.³

THIS AGREEMENT, made January 5, 1923, between Doe Garage Co., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 371½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party is the owner of a Duplex automobile, 1921 touring car model, which it desires to rent to the Second Party, together with the services of a chauffeur, for a period of three months beginning on June 5, 1923, at a rental of three hundred (\$300) dollars a month; and

WHEREAS, the Second Party is willing to hire such automobile and services:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the First Party hereby rents to the Second Party the said Duplex automobile, 1921 touring car model, for use by the Second Party during any, or all, hours of the day, or night, during the period beginning June 5, 1923, and ending September 5, 1923.

2. That the First Party, at its own cost and expense, shall:

(a) Hire and furnish to the Second Party a duly licensed chauffeur to drive said automobile, during said period;

(b) Pay for all gasoline, oil, or other supplies, and make all repairs, which may be needed, in order to operate said automobile; and

(c) Furnish garage space for said automobile, when it shall not be used by the Second Party.

3. That the Second Party shall pay to the First Party for the use of such automobile and the services of such chauffeur the sum of three hundred (\$300) dollars a month, payable in advance on the fifth day of each month, during the term of this agreement.

4. That if the said automobile, and/or the said chauffeur, shall not be available for use by the Second Party, at any time, or times, that the Second Party may require, and if the First Party shall, at

³ Adapted from *McNamara v. Leipziger* (1919), 227 N. Y. 291, 125 N. E. 244.

any time, or times, fail to furnish a chauffeur and/or an automobile which shall be equal to the aforesaid automobile in appearance, durability and capacity, then, and in any such event, the Second Party shall be entitled to receive or may deduct from the next payment hereinbefore provided for the sum of fifteen (\$15) dollars for each day that either the said automobile, and/or chauffeur, shall not be available for use by the Second Party.

5. That the First Party shall, within one day from the date hereof, procure insurance, which will indemnify and save harmless the Second Party from any and all liability, by reason of any accidents, or injuries, of any kind, which may result from the operation, or use, of the said automobile; and, if the First Party shall fail to obtain such insurance, the Second Party shall have the right to procure the same and to deduct the expense thereof from the second payment of rent herein provided for.

IN WITNESS WHEREOF, the First Party has caused these presents to be signed by its President, and its corporate seal to be hereunto affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

Doe Garage Co.,

By John Doe,

President.

(Seal)

Attest:

John Jones,

Secretary.

Richard Roe (L.S.).

No. 62.

Agreement for hire of manufacturing plant, with option to purchase.⁴

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

⁴ Cf. *Bailey v. Colby* (1856), 34 N. H. 29, 66 Am. Dec. 752; *Young v. Leary* (1892), 135 N. Y. 569, 32 N. E. 607.

WHEREAS, the First Party is the owner of the certain manufacturing plant, which now is in the premises, known as No. 11½ Broadway, Borough of Manhattan, New York City; and

WHEREAS, the Second Party desires to rent the said manufacturing plant:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the First Party hereby leases to the Second Party, and the Second Party hereby hires from the First Party, for the term of one year from this date, at the yearly rental of fifty-two hundred (\$5,200) dollars, to be paid in equal weekly installments of one hundred (\$100) dollars each, on Saturday of each week, the manufacturing plant of the First Party, which is now in the premises, known as No. 11½ Broadway, Borough of Manhattan, New York City, together with all fixtures, implements, tools, utensils, and other things, which are now in the said premises, and which are described in the schedule hereto annexed, and hereby made a part hereof.

2. That the First Party covenants that the property leased as aforesaid, and every part thereof, is free from all liens, encumbrances, claims and charges of any kind whatsoever.

3. (a) That the Second Party, at his own cost and expense, may remove the property leased as aforesaid from its present location to any other place in the Borough of Manhattan, New York City, wherein the Second Party may elect to use the said property, or any part thereof.

(b) That the First Party may, from time to time, enter any premises wherein said leased property shall be, for the purpose of examining and inspecting the condition thereof.

4. That the Second Party shall exercise reasonable care, in using said property, and shall, at his own cost and expense, keep the same in repair, and shall replace any injured part, or parts, and, at the end, or other expiration, of this agreement (except as otherwise provided in paragraph "8" hereof), shall surrender the said property to the First Party, in as good order and condition as they now are in, reasonable wear and tear resulting from the proper use thereof excepted.

5. That the Second Party shall, at his own cost and expense, but for the benefit of the First Party, immediately insure the said property in the sum of ten thousand (\$10,000) dollars against loss or damage by theft or fire.

6. That punctuality in the payment of the rent aforesaid is of the essence of this agreement; and, if the Second Party shall fail to make any payment of rent, as and when the same shall become due hereunder, then the First Party shall have the right, at his election, without prior notice or demand, to take possession of the said leased property, and remove the same, and, for that purpose, to enter any premises where the same shall be, without being liable to any suit, or action, or other proceeding by the Second Party.

7. That, upon the First Party retaking possession of the said leased property, pursuant to the provisions of the preceding paragraph hereof, this agreement shall forthwith terminate, without prejudice, however, to any right, or claim, of the First Party, for arrears of rent, if any, or on account of any preceding breach or breaches of this agreement.

8. That, if the Second Party shall give notice to the First Party, on or before October 1st next, of his desire to purchase the property leased as aforesaid, the First Party will, upon the payment to him of the sum of ten thousand (\$10,000) dollars, within ten (10) days after the service of such notice, by good and sufficient bill or bills of sale (or by, or with, such other instrument, or instruments, as the Second Party may properly demand), sell, assign, transfer and convey the said manufacturing plant and all other property mentioned in the annexed schedule, to the said Second Party, free from all liens, encumbrances, claims and charges of any kind whatsoever.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

In the presence of

Richard Roe (L.S.).

John Jones.

[Annex Schedule of Machinery, etc.]

No. 63.

Agreement for hire of team of horses.⁵

AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City

⁵ Adapted from *American Preservers Co. v. Drescher* (1893), 4 Misc. 482, 24 N. Y. Supp. 361, 54 St. R. 266.

(herein called the "Owner"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Hirer"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That the Owner hereby lets to the Hirer, and the Hirer hereby hires from the Owner, his team of horses, consisting of one bay horse and one black horse.

2. That the Hirer shall pay to the Owner therefor the sum of (\$10) dollars for each day, or part of a day, that said horses are, or either of them is, in the possession of the Hirer; and that the full amount of such rent, or charge, shall be paid to the Owner, at his office at No. 11½ Broadway, Borough of Manhattan, New York City, not later than twelve o'clock, noon, on Saturday of each week.

3. That the Hirer shall not use the said horses, or either of them, without the City of New York, without first obtaining the Owner's written consent thereto.

4. That the Hirer shall, at his own cost and expense, forthwith insure the said horses for the benefit of the Owner, in the sum of seven hundred (\$700) dollars against theft, injury, or death.

5. That, upon receiving written notice from the Owner to return the said horses, the Hirer shall immediately deliver the same to the Owner, at his aforesaid office, in the same condition that they were, when received by the Hirer.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of
John Jones.

No. 64.

Agreement for pasturage of cattle.⁶

AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Agister"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Owner"),

⁶ Adapted from *McAuley v. Harris* (1888), 71 Texas 631.

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That the Agister shall receive and keep in his pasture, and the Owner shall deliver and place in the Agister's pasture, at Doe-ville, Sullivan County, New York, thirty (30) head of cattle.

2. That the Agister shall not overstock his pasture, while the cattle of the Owner are therein.

3. That the Owner shall pay the Agister for such pasturage the sum of ten (\$10) dollars per head, for the entire number of cattle of the Owner, which may be in such pasture on November 1, 1923, and the sum so accruing shall be due and payable to the Agister, upon the delivery of the cattle from said pasture.

4. That this agreement shall begin on April 2, 1923, and end on November 1, 1923.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of
John Jones.

CHAPTER IV
BUYER AND SELLER

Section 1.—Agreements Relating to Sale of Merchandise.

- No. 65—Agreement to sell carbolic acid crystals.
- No. 66—Agreement to sell encyclopedia in process of publication.
- No. 67—Agreement to sell fixtures and good-will of business, with covenants by seller not to engage in, or permit his premises to be occupied for, the same business.
- No. 68—Agreement to sell generator and appliances, containing financial statement by buyer, and covenant to deliver note or trade acceptance for balance of purchase price.
- No. 69—Agreement to sell horses, whereunder parties agree to deliver surety bonds, conditioned for performance of the agreement, and seller covenants to deliver a guarantee of payment executed by a designated bank.
- No. 70—Agreement to sell soda ash in monthly installments, whereunder each shipment is to constitute a separate sale.
- No. 71—Agreement to sell straw hats, with provision for arbitration.
- No. 72—Agreement to sell theatre programs.

Section 2.—Agreements to Purchase All Merchandise Required in Buyer's Business.

- No. 73—Agreement to purchase all carbon electrodes, which buyer may require in its business, during the year, with provision giving buyer benefit of reduction in price made by seller to others.
- No. 74—Agreement to sell all cans, which buyer may require in its business, during the year, with provision for quarterly revision of prices based upon cost of materials and freight rates.

- No. 75—Agreement to sell all calcium carbide, which buyer may require in its business, during the year.

Section 3.—Agreements to Purchase Seller's Entire Output.

- No. 76—Agreement of manufacturer of cones to sell entire output to buyer.
- No. 77—Agreement to manufacture and sell fuse and primer parts, with covenant by seller to devote his entire manufacturing facilities exclusively to performance of agreement, and covenant by buyer to reimburse seller for actual net expenditures in event of cancellation.
- No. 78—Agreement by mining company to sell entire output of its mines and the output of the mines of any corporation in which it may own specified part of the capital stock.

Section 4.—Agreements to Sell Merchandise, Whereunder Buyer is Given Exclusive Sales Territory.

- No. 79—Agreement to sell liquid polish, whereunder buyer is given exclusive right of re-sale in the United States.
- No. 80—Agreement to buy definite amount of merchandise, during the year, whereunder buyer, also, purchases exclusive sales territory.
- No. 81—Agreement to sell neither less, nor more, than specific quantity of asphalt, for re-sale in specific territory.

Section 5.—Agreements Relating to Sale of Business.

- No. 82—Agreement to sell business, including building, factory, good-will, stock in trade, and trade-marks, with covenant by seller not to engage in the same business.
- No. 83—Agreement by corporation about to terminate its existence to sell its business and trade-name, in consideration of stock issued to it by buying corporation.
- No. 84—Same—another form.
- No. 85—Agreement to sell insurance business, with covenants by seller not to solicit, or accept, business of customers.
- No. 86—Agreement for consolidation of two business corporations, under laws of New York.

- No. 87—Bill of sale of match business, trade-marks, etc., with covenant by seller not to engage in same business.

Section 6.—Agreements Relating to the Purchase of Stock.

(A).—Agreements Made Before Incorporation.

- No. 88—Conditional agreement made prior to incorporation to subscribe to stock of new corporation to be formed under a plan adopted and deposited with trust company, which is appointed agent of syndicate managers to receive moneys, etc.
- No. 89—Agreement between promoters and stockholders of various corporations, whereunder the latter agree to deposit their stock and receive in exchange the stock of a new corporation to be organized by the former.
- No. 90—Agreement of underwriting, whereunder subscribers agree to purchase stock in a corporation to be formed.

(B).—Agreements Made After Incorporation.

- No. 91—Agreement to purchase stock from broker on installment plan.
- No. 92—Agreement with corporation to purchase its stock.
- No. 93—Agreement with corporation to purchase its stock on installment plan.
- No. 94—Same—another form.
- No. 95—Agreement for sale, on installment plan, of large block of stock, which is to be deposited in escrow, pending final payment.
- No. 96—Agreement with stockholder to purchase his stock, conditioned upon corporation increasing its capital stock, whereunder stock and purchase price are deposited in escrow.
- No. 97—Agreement by stockholder to sell entire capital stock of corporation, whereunder seller releases corporation of indebtedness in return for assignment of accounts, and covenants to hold it harmless from debts and not to compete with it.
- No. 98—Agreement of corporation to sell its stock to syndicate managers.

- No. 99—Agreement between two stockholders whereunder each agrees to purchase shares owned by the other, at the time of his death.

Section 7.—Miscellany.

- No. 100—Agreement by president of corporation, upon sale of its assets, not to engage in similar business.
- No. 101—Clause for arbitration in designated city.
- No. 102—Clause for arbitration by committee of an exchange.
- No. 103—Clause for arbitration of dispute respecting quality.
- No. 104—Clause extending time for delivery upon contingencies.
- No. 105—Clause excusing nondelivery.
- No. 106—Clause excusing nondelivery, or partial delivery, upon certain contingencies.
- No. 107—Clause excusing partial nondelivery.
- No. 108—Same—another form.
- No. 109—Clause permitting seller to alter terms of credit.
- No. 110—Clause permitting closing of contract upon bankruptcy or insolvency.
- No. 111—Clause providing for delivery of merchandise in transit, upon receipt thereof by seller.
- No. 112—Clause limiting time for claims and damages.
- No. 113—Clause limiting time for return of goods or presentation of claims.
- No. 114—Clause making each shipment separate contract and providing remedies upon buyer's breach.
- No. 115—Clause terminating agreement of sale upon seller's failure to obtain lease for buyer.
- No. 116—Clause waiving oral conditions.
- No. 117—Covenant by seller not to engage in same business, within stated number of blocks, nor to accept trade of present customers.

SECTION 1.—AGREEMENTS RELATING TO SALE OF
MERCHANDISE.

No. 65.

Agreement to sell carbolic acid crystals.¹

Richard Roe Co.,
No. 11½ Broadway,
New York City.

New York City,
January 5, 1923.

Gentlemen:

We hereby confirm the sale to you of:

Quantity: 1,120 lbs.

Article: Doe crystal carbolic acid, U.S.P. standard.

Price: 7¢ per lb., f.o.b., New York City.

Terms: 1% 10 days; 30 days net.

Delivery: In such quantities and at such times during the year
1923, that you may select.

Fire, strikes, accidents to our works, or to our stock, or change
in tariff, or war in, or embargo imposed by, any country from
which we obtain said article, or any other contingencies beyond our
control, will permit us, at our option, to cancel this contract, or
any part thereof.

Yours very truly,
Doe Chemical Co.,
By John Doe,
President.

Accepted, January 6, 1923,
Richard Roe Co.,
By Richard Roe,
President.

¹ Adapted from *Thaddeus Davids Co. v. Hoffman-LaRoche C. Wks.* (1917), 178
App. Div. 855, 166 N. Y. Supp. 179.

No. 66.

Agreement to sell encyclopedia in process of publication.²

New York City,
January 5, 1923.

Doe Book Co.,
No. 11½ Broadway,
New York City.

Gentlemen:

Ship me, as each volume is published, transportation prepaid, one set of Doe's "Corpus Juris," which shall consist of not less than sixty (60) volumes printed on thin paper, and be bound in fabri-koid covers, with russian backs, all of which I agree to buy and pay for, at the rate of five (\$5) dollars a volume, as and when each volume is delivered to me. It is agreed, however, that any volumes in excess of sixty (60) volumes (inclusive of index), which may be required to complete the said set, shall be delivered to me, as published, free of all cost, except that of transportation.

I, also, agree, upon the delivery to me of the entire set aforementioned, to re-sell and deliver to you one set of Doe's "Encyclopedia of Law & Procedure," consisting of forty (40) volumes, for the sum of one hundred (\$100) dollars, which amount, it is agreed, shall be applied in payment of the last twenty volumes of Doe's "Corpus Juris" that I am to pay for.

Upon my death, this contract shall forthwith terminate, and my estate shall not be liable thereunder, except for any volumes already delivered, which may then be unpaid for.

No representation, or agreement, not herein stated, has been made by any salesman.

This contract is not transferable, except by mutual consent, evidenced in writing.

Name: Richard Roe.

Address: 37½ Broadway,
New York City.

The foregoing offer is hereby accepted, this 5th day of January, 1923.

Doe Book Co.,
By John Doe,
President.

² Adapted from *American Law Book Co. v. Ball* (1917), 165 N. Y. Supp. 925.

No. 67.

Agreement to sell fixtures and good-will of business, with covenants by seller not to engage in, or permit his premises to be occupied for, the same business.³

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Seller"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Buyer"), WITNESSETH:

WHEREAS, the Seller is the tenant of the store and basement, in the building known as No. 57½ Broadway, Borough of Manhattan, New York City, and conducts a shoe business therein, under the name of "The Bootery"; and

WHEREAS, the Seller is entitled to the possession and control of said premises until January 5, 1928, under a lease with the owner thereof; and

WHEREAS, the Seller desires to retire from the business of conducting said shoe business, not later than March 5, 1923; and

WHEREAS, the Buyer is engaged in operating a shoe store at No. 59½ Broadway, Borough of Manhattan, New York City:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the Seller hereby sells to the Buyer, and the Buyer hereby purchases from the Seller, all his right, title and interest in the good-will of the shoe business conducted by the Seller, under the name of "The Bootery," at No. 57½ Broadway, Borough of Manhattan, New York City, together with all his right, title and interest in the chairs, foot-stools, show-cases, shelving, mirrors, linoleum, carpets, office furniture, electric light fixtures, and all other furniture and fixtures, which are used in said business, and which are described in "Schedule A" hereto annexed, and hereby made a part hereof.

2. That the Seller shall deliver the aforesaid tangible property to the Buyer, not later than March 5, 1923; and the Buyer shall remove such property from the premises of the Seller, within five (5) days after receiving written notice of the Seller's readiness to deliver the same; but, pending such removal, the Seller may, without charge, use said property in conducting his said shoe business.

³ Cf. *Hodge v. Sloan* (1887), 107 N. Y. 244, 17 N. E. 335, 1 Am. St. Rep. 244.

3. That the Seller shall, pending the delivery thereof, insure said tangible property, at his own expense, for the benefit of the Buyer, against loss by fire, in the amount of three thousand (\$3,000) dollars.

4. That the Seller covenants that he will not, between January 5, 1923, and January 5, 1928, either solely, or jointly with, or as agent for, any person, or persons, corporation, or corporations, directly or indirectly, carry on, engage, or be interested, in any manner, in carrying on, in the building, known as No. 57½ Broadway, Borough of Manhattan, New York City, the business of manufacturing, buying or selling, shoes, slippers, boots or any other articles, now sold by the said Buyer, in his store at No. 59½ Broadway, Borough of Manhattan, New York City.

5. That the Seller covenants that, in no event, nor under any circumstances whatever, will, or shall, said store and basement in the premises known as No. 57½ Broadway, Borough of Manhattan, New York City, or any part thereof, be used, or occupied, during the period beginning January 5, 1923, and ending January 5, 1928, by any person, or persons, corporation, or corporations, for the purpose of manufacturing, buying and selling shoes, slippers, boots, or any other articles, now sold by the said Buyer in his store, at No. 59½ Broadway, New York City.

6. That the Seller shall pay to the Buyer the sum of fifty (\$50) dollars as liquidated damages, for each week in which, or during which, any of the covenants contained in paragraphs "4" or "5" hereof is, or shall be, violated, or breached.

7. That the Buyer, as consideration for the foregoing sale and for the performance by the Seller of the foregoing covenants, shall pay to the Seller the sum of five hundred (\$500) dollars, upon the execution hereof, and, simultaneously therewith, shall deliver to the Seller, his three promissory notes, drawn to the order of the Seller, which shall be payable, as follows:

(a) One note for one thousand (\$1,000) dollars, payable February 5, 1923.

(b) One note for one thousand (\$1,000) dollars, payable March 5, 1923.

(c) One note for five hundred (\$500) dollars, payable April 5, 1923.

8. That, upon a default in the payment of one of said notes,

any and all notes, then remaining unpaid, shall forthwith become due and payable, notwithstanding their tenor.

9. That the making, execution and delivery of this contract has been induced by no representations, statements, or warranties, other than those herein expressly set forth.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

[Annex Schedule of Chairs, Foot-stools, etc.]

No. 68.

Agreement to sell generator and appliances, containing financial statement by buyer, and covenant to deliver note or trade acceptance for balance of purchase price.⁴

January 5, 1923.

Doe Generator Co.

(herein called the "Company"),

11½ Broadway,

New York City.

Please ship to me, at Tarrytown, N. Y., *via* New York Central Railroad, upon the terms and conditions herein set forth, the following generator and appliances, f.o.b., your factory, in New York City, for which I agree to pay to the Company the sum of four hundred (\$400) dollars, viz.:

GENERATOR:

1 Five hundred (500) pound Doe Generator, Model No. 6.

APPLIANCES:

Quant.	No.
	Parlor
6	Hall
	Bed room 1st floor

⁴ Cf. *Fay v. Hill* (1918), 249 Fed. Rep. 415, 161 C. C. A. 389; *Atlas Shoe Co. v. Bechard* (1906), 102 Me. 197, 66 Atl. 390, 10 L. R. A. (N. S.), 679.

7	Kitchen	10
	Bath room	
	Cellar	
	Bed room up-stairs	
	Hog house	
	Garage	
12	Burners	15
18	Lighters.	14

Terms: I agree to pay to the Company one hundred (\$100) dollars when I sign this order, and the balance of three hundred (\$300) dollars, with interest at the rate of six (6%) per cent, ninety days thereafter. I covenant and agree to execute and deliver to the Company, whenever requested, either a trade acceptance or note for the balance aforesaid, which shall be payable, with interest at the rate of six (6%) per cent three months from the date hereof.

In case of default in payment of the above balance, or in case of my failure, or refusal, to execute and deliver to the Company, upon its request, the said trade acceptance, or note, then, and in any such event, the balance then unpaid hereunder shall at once become and be due and payable.

FINANCIAL STATEMENT:

In order to induce the Company to accept this order, and to extend to me credit and time for payment, I hereby represent and warrant:

That I live at No. 15½ Main Street, Tarrytown, New York; that I am thirty years of age; that I am married; that my occupation is that of farmer; that I am the owner of thirty acres of land recorded in my own name, and located in the county of Westchester, State of New York, the cash value of which is twenty-five thousand (\$25,000) dollars, and on which the only encumbrance is a first mortgage in the sum of five thousand (\$5,000) dollars; and that I further own personal property in the county of Westchester, State of New York, worth three thousand (\$3,000) dollars, on which the only encumbrance is a chattel mortgage in the sum of one thousand (\$1,000) dollars; and that my net worth, above all debts, is twenty-two thousand (\$22,000) dollars.

WARRANTY: In accepting this order, the Company warrants that the generator it will furnish will be on the permitted list of the

National Board of Fire Underwriters, and that it will be a thoroughly durable galvanized steel acetylene generator, automatic in action, of good material and workmanship.

PAYMENTS: Payments hereunder shall be made only by check or draft (and when requested by the Company, by note or trade acceptance), drawn to the order of the Company.

Unless otherwise directed in writing by an officer of the Company, I may deliver any such payments to a representative of the Company duly authorized in writing by it to receive the same; and I agree that any payments, not made as herein provided, shall not, unless actually received by the Company, be binding upon it.

This order shall become a contract with the Company, upon the acceptance thereof, in the space below, by one of the officers of the Company; it being understood that this instrument, upon such acceptance, will contain all, and the only, agreements between the Company and myself, and that no agent, or representative, of the Company has made any statements, or verbal agreements, modifying, or adding to, the terms and conditions herein set forth.

It is further understood that, upon the acceptance of this order, the contract so made cannot be cancelled or revoked by either party, nor may it be altered, or modified, by any agent of the Company, in any manner, except by agreement in writing signed by the Company through one of its officers.

Purchaser: Richard Roe (L.S.).

Address: No. 15½ Main Street,

Tarrytown, N. Y.

Agreed to and accepted, at New York City, this 10th day of January, 1923,

Doe Generator Co.,

By John Doe,

President.

(Seal)

No. 69.

Agreement to sell horses, whereunder parties agree to deliver surety bonds, conditioned for performance of the agreement, and seller covenants to deliver a guarantee of payment executed by a designated bank.⁵

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York

⁵ Adapted from *Reeder v. Smith* (1921), 231 N. Y. 635, 132 N. E. 918.

City (herein called the "Seller"), and Richard Roe, residing at No. 371½ Broadway, Borough of Manhattan, New York City (herein called the "Buyer"), WITNESSETH:

WHEREAS, the Buyer has entered into a contract with the Government of France, whereunder the Buyer has agreed to sell and deliver to said Government, and the said Government has agreed to purchase and receive from the Buyer, twenty thousand (20,000) horses; and

WHEREAS, the Seller desires to sell to the Buyer, and the Buyer desires to purchase from the Seller, twenty thousand (20,000) horses, in order to enable the Buyer to perform his said contract with the Government of France:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the Seller agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, twenty thousand (20,000) horses, which shall conform, in all respects, to the specifications set forth in "Exhibit A" hereto annexed, and hereby made a part hereof.

2. That the Seller shall deliver the said horses, at Newport News, or at any other Atlantic seaport that the Buyer may designate by written notice to the Seller, mailed to the Seller at his address, No. 11½ Broadway, Borough of Manhattan, New York City.

3. That the Buyer shall pay the Seller the sum of one hundred and sixty (\$160) dollars for each horse, which shall have been inspected and accepted by the duly appointed agent, or agents, of the Government of France, and which shall have been certified by the Bureau of Animal Industry of the United States to be in a fit condition for shipment.

4. That the inspection of said horses by the agent, or agents, of the Government of France shall be made at Portland, Oregon, and the certification thereof by the Bureau of Animal Industry of the United States shall be made at the port of shipment.

5. That the Seller shall furnish such a number of horses as will enable the agent, or agents, of the Government of France, to inspect and accept, as complying with the requirements set forth in "Exhibit A" hereto annexed, not less than two thousand (2,000) horses in each week, beginning January 12, 1923, and the Seller shall deliver for such inspection and acceptance, at Portland, Oregon, within one week from the date hereof, at least one thou-

sand (1,000) horses, which shall conform to the specifications set forth in "Exhibit A."

6. That the Seller shall pay the expense of transporting, feeding and insuring the said horses, in transit, and shall pay all other costs and expenses of every kind, which may be incurred, prior to the time, or times, when said horses shall have been inspected and accepted, by the agent, or agents, of the Government of France, and shall have been certified by the Bureau of Animal Industry of the United States as fit for shipment; but if the Buyer shall hereafter designate as the place of delivery some Atlantic seaport other than Newport News, then, and in such event, the Buyer shall bear and pay all freight charges in excess of the freight charges between Portland, Oregon, and Newport News, which may be incurred in delivering such horses to such Atlantic seaport other than Newport News.

7. (a) That the Seller shall, within two (2) days from the date hereof, deliver to the Buyer a bond in the amount of two hundred and fifty thousand (\$250,000) dollars, executed by a surety company satisfactory to the Buyer, guaranteeing to the Buyer the performance of this contract by the Seller.

(b) That the Buyer shall, within three (3) days from the date hereof, deliver to the Seller a bond in the amount of two hundred and fifty thousand (\$250,000) dollars, executed by a surety company satisfactory to the Seller, guaranteeing to the Seller the performance of this contract by the Buyer.

8. That the Buyer covenants that, within five (5) days from the date hereof, the Koe City National Bank of New York City, will, by its agreement in writing, and in a form satisfactory to the Seller, guarantee to pay to the Seller the purchase price of all horses delivered, inspected, accepted and certified as fit for shipment, upon presentation by the Seller to such Koe City National Bank of railroad bill of lading and way bill therefor.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

[Annex List of Specifications.]

No. 70.

Agreement to sell soda ash in monthly installments, whereunder each shipment is to constitute a separate sale.⁶

New York City,
January 5, 1923.

Doe Chemical Works,
No. 11½ Broadway,
New York City.

Gentlemen:

We confirm having sold to you:

Material: About 600 tons of ordinary light soda ash (Doe thistle brand), 58% alkali, in barrels.

Delivery: About 100,000 lbs., each month, beginning in January, 1923, and ending in January, 1924.

Price: \$2.85 per cwt., f.o.b., Saltville, Va.

Terms: Net cash against railroad bill of lading and documents, at the time the goods leave our factory, at Saltville, Va.

Conditions: (1) The Buyer shall give the Seller thirty days' previous notice of each shipment required. If such notice shall not be given by the Buyer, it is agreed that the Seller shall have the right to order these goods shipped to New York City, and the Buyer agrees, in such event, to accept and pay for the goods, upon the Seller tendering to the Buyer the railroad bill of lading therefor.

(2) The Seller shall not be responsible for contingencies beyond its control, such as embargoes, shortage of cars, government seizure or control, strikes, or other unavoidable causes, which may, or shall, prevent shipment, at the time designated by the Buyer, or provided for herein.

(3) Each shipment, or delivery, shall constitute a separate sale, and default in any shipment, or delivery, shall not vitiate this contract, in respect of any other shipments, or deliveries.

(4) The Buyer agrees to accept and pay for all shipments, as herein provided, but, if, for any of the reasons above stated, any shipment, or shipments, shall not leave the factory as ordered, prior to April 1, 1923, the Buyer shall not be obligated to accept, or pay for, any shipment, or delivery, tendered thereafter.

⁶ Adapted from *Dreyfus v. Raritan Chemical Works* (1919), 107 Misc. 369, 176 N. Y. Supp. 614.

(5) Any government tax, which may be imposed upon the goods, which are the subject of this sale, shall be added to, and become, a part of the present contract price thereof.

Yours very truly,

Roe & Co., Inc.,
By Richard Roe,
President.

Accepted:
Doe Chemical Works,
By John Doe,
President.

No. 71.

Agreement to sell straw hats, with provision for arbitration.⁷

New York City,
January 5, 1923.

Mr. John Doe,
No. 111½ Broadway,
New York City.

Dear Sir:

We confirm having sold to you the following:

Quantity: 5000 dozen.

Merchandise: Monghidoro hoods.

Size: Not over 27 c/m from top of crown to extremity of brim.
The braid used shall be from 11 to 13 m/m in width, but shall average 12 m/m.

Price: \$3.75 per dozen. If a change in the present tariff rate of 25% shall be made, you are to be debited with any such increase, or credited with any such reduction.

Shipment: From Sigma, 500 dozen in November next ensuing, and 500 dozen every two weeks thereafter, if possible, until the total of 5,000 dozen shall have been shipped.

Payment: 7% 10 days, 6% 60 days. We reserve, however, the right to alter these terms of credit.

Further terms: (a) This contract is contingent upon strikes, floods, riots, and all other contingencies, which are unavoidable, or beyond our control. The declaration of war, or the existence of a rebellion, in the country from which the merchandise is to be shipped shall forthwith terminate this contract.

⁷ Adapted from *Arkell & Douglass, Inc. v. N. H. Bornstein & Sons, Inc.* (1919), 188 App. Div. 158, 176 N. Y. Supp. 581.

(b) Each shipment shall be considered as a separate contract.

(c) All claims must be made within ten days from the date of delivery.

(d) In the event of the loss of any part of the above described merchandise, or in the event of any damage to a portion thereof, after shipment and before receipt, which shall make the same unsalable, so much of this contract as shall relate thereto shall become and be void.

(e) Ten per cent (10%) of the original unopened packages must be retained and be available for inspection, in the event of any dispute arising regarding the quality of the merchandise received; and, if a default shall be made in this respect, no claim predicated thereon shall be made or allowed.

(f) Any difference arising between the parties to this contract shall be settled by arbitration in New York City. Each party, in any such event, shall appoint one arbitrator, and, if the arbitrators are unable to agree, an umpire shall be appointed by them in the usual manner. Both parties hereby agree to abide by the decision of the arbitrators, or of any arbitrator and the umpire, and each party hereby waives his right to take legal measures, except to enforce the award.

Yours very truly,
Roe & Co.

Accepted by
John Doe.

No. 72.

Agreement to sell theatre programs.⁸

Doe Program Co.,
No. 11½ Broadway,
New York City.

New York City,
January 5, 1923.

Gentlemen:

We hereby agree to purchase from you two thousand (2,000) of your theatre programs, each week, for the period of fifty-two (52) weeks, beginning January 5, 1923, and ending January 4, 1924, and we agree to pay you therefor the sum of ten (\$10) dollars each week, as hereinafter set forth.

⁸ Cf. *Doolittle v. Callender* (1911), 88 Neb. 747, 130 N. W. 436.

Said magazine programs shall be 5x7½ inches in size, and, apart from advertising matter, shall contain not less than one full page for our house program and six pages of reading matter, relating to motion picture actors and actresses, and motion picture news in general.

We agree to furnish you with a copy of our house program for each week, not later than Tuesday of the previous week, and further agree to remit payment, at the same time, for the theatre magazine programs delivered to us during the previous week.

Such theatre programs shall be sent to us by express, charges collect, and shall be delivered to us in time for distribution by us at our first performance on Monday of each week. If, without your fault, the express company shall fail to deliver the magazine programs to us in time for such distribution, we agree not to hold you responsible for any damages, nor shall such failure authorize us to cancel this contract.

We agree that any failure by us to supply you with a copy of our house program, on or before the Tuesday preceding the day of delivery, as set forth herein, shall not relieve us from our obligation to pay the sum of ten (\$10) dollars each week, during the period hereof.

No verbal conditions and statements of any nature, made by either of us, which are not incorporated herein, shall be binding upon us.

Name: Roe Film Co.,

By John Roe,

President.

Address: No. 37½ Broadway,

New York City.

Agreed to and accepted,

January 7th, 1923,

Doe Program Co.,

By John Doe,

President.

SECTION 2.—AGREEMENTS TO PURCHASE ALL MERCHANDISE REQUIRED IN BUYER'S BUSINESS.**No. 73.**

Agreement to purchase all carbon electrodes, which buyer may require in its business, during the year, with provision giving buyer benefit of reduction in price made by seller to others.⁹

AGREEMENT, made December 21, 1922, between the Doe Carbon Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 27½ Main Street, Niagara Falls, New York (herein called the "Seller"), and the Roe Carbide Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Buyer"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That the Seller hereby sells to the Buyer, and the Buyer hereby purchases from the Seller, the following quantity of material, at the price, and on the terms, herein set forth:

Material: Threaded carbon electrodes, twenty-four (24) inches in diameter, and seventy-two (72) inches in length, including the necessary nipples and joint compounds.

Quantity: The Buyer's entire requirements, for the year beginning January 1, 1923, and ending December 31, 1923.

Price: Six (6¢) cents per pound. The Buyer, however, shall receive the benefit of the amount of any general reduction in the price of electrodes, of the like size, quantity and quality provided for in this agreement, which may be made by the Seller, during the period thereof.

Shipment: In carload lots.

Freight: F.o.b., Suspension Bridge, Niagara Falls, New York.

Terms: Net cash within thirty (30) days from the date of invoice, subject to a discount of two (2%) per cent, for any payment made not later than ten (10) days from the date of the invoice.

⁹ Cf. *A. Klipstein & Co. v. Allen* (1903), 123 Fed. Rep. 992; *Loudenback Fertilizer Co. v. Tennessee Phosphate Co.* (1903), 121 Fed. Rep. 298, 58 C. C. A. 220, 61 L. R. A. 402.

2. That the Buyer shall order shipments to be made in approximately equal monthly installments and as rapidly as its consuming capacity shall permit; but orders for the shipment of all the electrodes and parts covered by this agreement shall be given by the Buyer, prior to January 1, 1924.

3. That if the Seller's usual manufacturing process shall be interrupted, or if shipment hereunder shall be delayed by reason of strikes, lockouts, fire, accidents, delays of carriers, or by reason of the stoppage of labor from whatsoever cause, or by reason of any other causes whatsoever beyond the Seller's control, delivery may be postponed by the Seller, without the Seller being answerable in damages to the Buyer for any such postponement.

4. That, if during the term of this agreement, the financial responsibility of the Buyer shall become impaired, or unsatisfactory to the Seller, then such terms of payment as shall be satisfactory to the Seller may be demanded by the Seller and shall be complied with by the Buyer.

5. That this agreement shall not be assigned by the Buyer, except upon the consent thereto of the Seller.

IN WITNESS WHEREOF, each of the parties hereto has hereunto set its hand, by its President, thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary, the day and year first above written.

Doe Carbon Co., Inc.,
By John Doe,
President.

(Seal)
Attest:
John Jones,
Secretary.

Roe Carbide Co., Inc.,
By Richard Roe,
President.

(Seal)
Attest:
Henry Koe,
Secretary.

No. 74.

Agreement to sell all cans, which buyer may require in its business, during the year, with provision for quarterly revision of prices based upon cost of materials and freight rates.¹⁰

AGREEMENT, made January 5, 1923, between Doe Can Co., Inc., a corporation, duly organized under the laws of the State of New Jersey, and having an office for the transaction of business at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Seller"), and Roe Manufacturing Co., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Buyer"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

FIRST: That the Seller hereby sells, and the Buyer agrees to purchase from the Seller, all cans, drums and overcaps, of the styles and sizes shown in the list attached hereto (which list is a part of this contract), that the Buyer shall require for actual use in its business, between the date hereof and December 31, 1923; but it is agreed that, where a quantity appears opposite an item in the annexed list, the Buyer's orders for such item shall be for lots of not less than those specified opposite such item.

SECOND: That the prices of the said cans, drums and overcaps shall be as set forth in the aforesaid list, and shall be subject to any increase or deduction, which may be made in pursuance of the following conditions, viz.:

(a) 1. The prices set forth in the annexed list are based on a cost of three (\$3) dollars per hundred (100) pounds of twenty-eight (28) gauge black plate (tin mill), f.o.b., mill, Pittsburgh, Pa., District.

2. The prices in such list shall be advanced, or reduced, in accordance with the official price for black plate of the American Sheet & Tin Plate Co., which shall be in effect on April 1st, July 1st, October 1st, and January 1st next ensuing. That a readjustment of the prices in such list shall take place on April 1st, 1923, and every three (3) months thereafter, during the term of this

¹⁰ Cf. *Dailey Co. v. Clark Can Co.*, (1907), 128 Mich. 591, 87 N. W. 761; *East v. Cayuga Lake Ice Line* (1893), 21 N. Y. Supp. 887.

agreement, and such readjustment shall be ascertained and made in the following manner:

No change shall be made in the list prices, unless there shall be a difference of at least ten (10¢) cents per hundred (100) pounds between the official price for black plate of said American Sheet & Tin Plate Co., on any of said dates and the aforementioned price of three (\$3) dollars per hundred (100) pounds. But for each difference of ten (10¢) cents per hundred (100) pounds on any of said dates, there shall be added to, or deducted from, the prices for cans, drums and overcaps set forth in the annexed list the corresponding differential set over against each size of can, drum and overcap, and a proportionate addition, or deduction, for each fractional difference of more than ten (10¢) cents.

3. The prices, as so readjusted and determined, shall take effect on the date fixed for the readjustment, and shall apply to all deliveries, which shall be made during the period of three (3) months next ensuing.

(b) 1. The prices for cans, drums and overcaps, as fixed in the said list, are likewise based upon the regular tariff rates of freight on black plate existing at the date hereof between the plate mills and the Seller's factory at which said cans, drums and overcaps shipped under this contract will be manufactured.

2. If, during the term of this agreement, the said freight rates, or the minimum carload weights published in connection with the same, shall be changed, the prices of cans, drums and overcaps fixed hereby shall thereupon be increased, or decreased, to the extent of the actual difference in the charge for transportation paid by the Seller on black plate used in making said cans, drums and overcaps, which shall be caused by such change.

THIRD: That all merchandise named in this contract shall be delivered, f.o.b., Seller's factory, at Toledo, Ohio, and the Buyer shall pay for all merchandise shipped, upon presentation to it of a sight draft attached to the bill of lading, less one (1%) per cent cash discount.

FOURTH: That shipment shall be made, from time to time, as the orders of the Buyers may require, provided the Buyer shall give to the Seller reasonable notice of the amounts of such shipments in sufficient time to enable the Seller to provide and ship the material, during the period for which such shipments are to be used.

FIFTH: That any claim for defective materials, imperfect manufacture, shortage in count, or for any other cause, shall be presented by the Buyer, within thirty (30) days from the receipt of goods, and no claim shall be made by the Buyer for consequential damages.

SIXTH: That each shipment shall be treated as a separate and distinct contract; but, if the Buyer shall fail to fulfill the terms of payment, the Seller may, without prejudice to any other lawful remedy, defer further shipments, until payments are made, or it may cancel this contract.

SEVENTH: That the Seller shall have the right, because of any orders, or instructions, now, or hereafter, issued by representatives of the Government of the United States, or on account of its inability to make complete deliveries on all of its contracts, because of a scarcity of tin plate, or other material, to reduce deliveries under this contract, or to defer and postpone the same, until such deliveries can be resumed.

EIGHTH: That fire, strikes, differences with workmen, accidents to machinery, failure of the usual sources of supply of materials, including the plate of the sizes, gauges, or weights, ordinarily used by the Seller for the manufacture of the cans hereby sold, or any other contingencies beyond the control of the Seller, whether related, or unrelated, or similar, or dissimilar, to any of the foregoing, shall be sufficient excuse for any delay in shipments traceable to such cause. Similar causes, unavoidable by the Buyer, shall be sufficient excuse for the failure of the Buyer to take cans under this contract, beyond those in transit, until such contingencies are removed.

NINTH: That if, during the term of this contract, any special taxes, or new, or additional, customs duties, shall be laid by the United States upon any materials entering into the cans, drums and overcaps, then the prices of cans, drums and overcaps, as set forth in the annexed list, shall be thereupon advanced to the extent of the increased cost caused thereby.

TENTH: That this contract shall be binding upon, and inure to the benefit of, the successors and assigns of the respective parties hereto, and upon all persons, associations, or corporations, which shall engage in the business herein contemplated, under the control and direction of the parties hereto.

IN WITNESS WHEREOF, each of the parties hereto has hereunto set its hand, by its President thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary, the day and year first above written.

Doe Can Co., Inc.,
By John Doe,
President.

(Seal)
Attest:
John Jones,
Secretary.

Roe Manufacturing Co.,
By Richard Roe,
President.

(Seal)
Attest:
Henry Koe,
Secretary.

[Annex Price List.]

No. 75.

Agreement to sell all calcium carbide, which buyer may require in its business, during the year.¹¹

AGREEMENT, made this 5th day of January, 1923, between John Doe, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Seller"), and the Roe Carbide Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 15½ Main Street, Syracuse, New York (herein called the "Buyer"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That the Seller agrees to sell, and the Buyer agrees to purchase, the Buyer's requirements of calcium carbide for the Buyer's own use, in the Buyer's welding operations, conducted at Syracuse, New York, between the date hereof and December 31, 1923, and thereafter, until either party shall give to the other at least thirty

¹¹ Cf. *Minnesota Lumber Co. v. Whitebreast Coal Co.* (1895), 160 Ill. 85, 43 N. E. 774, 31 L. R. A. 529.

(30) days' prior written notice of its intention to terminate this agreement; and, upon the expiration of the period (not less than thirty days) fixed in any such notice, this agreement shall terminate.

2. That the following is a statement of the size, package, price, terms and delivery of the aforesaid calcium carbide, to wit:

Material: Doe carbide, of the size commercially known as $1\frac{1}{4} \times \frac{3}{8}$.

Packed: In steel drums, each holding one hundred pounds of calcium carbide.

Price: Five (\$5) dollars per drum, payable in United States gold coin, or its equivalent in currency, with exchange on New York or Chicago.

Terms: Two per cent, ten (10) days; thirty (30) days net.

Delivery: F.o.b., warehouse of the Seller, which may be nearest to the Buyer.

3. That the price specified above is based on the freight rates on calcium carbide, which now exist between the warehouse of the Seller, which is nearest to the Buyer, and the factory of the Seller, which is nearest to such warehouse. If such freight rates shall increase, or decrease, the price specified shall be increased, or decreased, as the case may be, by the addition thereto, or subtraction therefrom, of such freight increase or decrease.

4. That if the Buyer shall fail to make payment pursuant to the terms hereof, after demand therefor, the Seller may, at its option, defer any further deliveries hereunder, or may stop any shipments in transit, until the Buyer shall have made such overdue payment and shall have paid in advance for such deferred deliveries, or for such shipments stopped in transit, or the Seller may defer any further deliveries hereunder, until the Buyer, if the Seller so elects, shall have satisfied the Seller of the Buyer's financial responsibility.

5. That, if the Seller, at any time, shall have any doubt about the Buyer's financial responsibility, the Seller may decline to make further deliveries hereunder, until the Buyer shall have satisfied the Seller of the Buyer's financial responsibility, or shall have paid in advance for such further deliveries.

6. That all deliveries shall be subject to, and contingent upon, strikes, riot, war, invasion, fire, explosion, accident, failure, or curtailment, in the Seller's supply of calcium carbide, delays of carrier and/or other delays beyond Seller's reasonable control.

7. That all the terms of this agreement are herein set forth, and that no change in, or addition to, the terms, or provisions, hereof, shall hereafter be made, unless approved in writing by an executive officer of the Seller.

8. This instrument, after it shall have been signed by the Buyer, shall not be binding upon the Seller, until it shall have been approved, in writing, by one of its executive officers.

9. That this agreement, when effective, shall supersede any previous existing agreement between the parties, relating to the purchase and sale of calcium carbide for the Buyer's requirements as herein specified.

IN WITNESS WHEREOF, each of the parties has hereunto set its hand, by its President thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary, the day and year first above written.

John Doe, Inc.,
By John Doe,
President.

(Seal)
Attest:
John Jones,
Secretary.

Roe Carbide Co., Inc.,
By Richard Roe,
President.

(Seal)
Attest:
John Smith,
Secretary.

SECTION 3.—AGREEMENTS TO PURCHASE SELLER'S ENTIRE OUTPUT.

No. 76.

Agreement of manufacturer of cones to sell entire output to buyer.¹²

AGREEMENT, made January 5, 1923, between John Doe, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "Seller").

¹² Adapted from *Silber v. Consolidated Wafer Co., Inc.* (1920), 194 App. Div. 899, 184 N. Y. Supp. 950.

and the Roe Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Buyer"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The Seller agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, all cones manufactured by the Seller, in its factory, at No. 11½ Broadway, Borough of Manhattan, New York City, during the period beginning this day and ending January 4, 1924, at the following prices:

No. 21, packed 200 to the box, at 51¢ a box.

No. 19, packed 200 to the box, at 42¢ a box.

No. 3, packed 300 to the box, at 34¢ a box.

2. The Seller shall promptly deliver to the Buyer, at its place of business, all cones manufactured by it; and the Buyer shall pay therefor, on Saturday of each week, the prices specified above, minus a two (2%) per cent discount.

3. The Seller covenants not to sell, give away or deliver any cones, during the term of this agreement, to any person, or association, or to any corporation, other than the Buyer; and, in the event of a breach of this covenant by the Seller, the Buyer, in addition to any other remedy or remedies, which it may pursue, shall have the right to refuse to accept and pay for any cones thereafter manufactured by the Seller.

IN WITNESS WHEREOF, each of the parties hereto has hereunto set its hand, by its President thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary, the day and year first above written.

John Doe, Inc.,

By John Doe,

President.

(Seal)

Attest:

John Jones,

Secretary.

Roe Co., Inc.,

By Richard Roe,

President.

(Seal)

Attest:

Henry Koe,

Secretary.

No. 77.

Agreement to manufacture and sell fuse and primer parts, with covenant by seller to devote his entire manufacturing facilities exclusively to performance of agreement, and covenant by buyer to reimburse seller for actual net expenditures in event of cancellation.¹³

AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Seller"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Buyer"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The Seller agrees to manufacture and sell and deliver to the Buyer, f.o.b., Bridgeport, Connecticut, and/or Boston, Massachusetts, at the option of the Seller, and the Buyer agrees to purchase and pay for, the shrapnel fuse parts necessary to make seven hundred thousand (700,000) complete sets, and the primer percussion parts necessary to make three million (3,000,000) complete sets, at the prices set forth in the specifications hereto annexed, and hereby made a part hereof.

2. All of the shrapnel fuse parts and all of the primer percussion parts shall be manufactured in accordance with the aforesaid specifications, and shall be subject to inspection by gauge and shall be free from defects in material and workmanship.

3. (a) All parts shall be subject to factory inspection, and the Buyer shall have the privilege of sending inspectors to the works of the Seller, during manufacturing, and the Seller shall furnish to such inspectors the fullest opportunity of observing all parts and proving all parts to gauge.

(b) All gauges used for inspection and testing hereunder, including any that may be required by the Buyer, shall be furnished by the Seller, at his own expense, and shall remain the property of the Seller.

(c) The Seller shall make good, or replace, all defects in material, or workmanship, in the said parts, which may be revealed by such factory inspection, or by firing tests made by the Buyer in

¹³ Adapted from *Manning, Maxwell & Moore, Inc. v. American Can Co.* (1918), 182 App. Div. 709, 169 N. Y. Supp. 713.

the United States, without, however, thereby prejudicing the rights of the Buyer, under the provisions of clause "6" of this agreement.

(d) Tender of any of said parts by the Buyer to the Seller for inspection, at the place of manufacture, shall constitute delivery, under this contract, subject to the right of the Buyer to inspect the same, within five (5) days after such delivery.

4. (a) The Seller shall deliver in approximately equal weekly quantities at least one million (1,000,000) complete sets of primer percussion parts, between January 1, 1923, and March 1, 1923, and shall complete delivery of the entire three million (3,000,000) complete sets of primer percussion parts, on or before August 1, 1923.

(b) The Seller shall deliver to the Buyer the shrapnel fuse parts as rapidly as possible, and shall deliver all of the said fuse parts, on or before August 1, 1923.

(c) If performance of any of the provisions of this contract by the Seller shall be delayed, or prevented, by strikes, fires, accidents, acts of God, or of the Government, or by the public enemy, or by any other cause beyond the control of the Seller, the dates of the deliveries specified in subdivisions "(a)" and "(b)" of this article, shall be extended for a corresponding length of time, not in excess of thirty (30) days, provided, however, that the Seller shall have given to the Buyer notice in writing thereof, within a reasonable time after the commencement of such disability.

5. If, on or before March 1, 1923 (or the later date to which the time for delivery may have been extended for one of the causes mentioned in the preceding article), the Seller shall have failed to deliver to the Buyer one million (1,000,000) complete sets of primer percussion parts, then the Buyer shall have the right to cancel and refuse to accept as many complete sets as will equal the difference between what the Seller may have delivered between January 1st and March 1st, 1923 (or the later date to which the time of delay may have been extended, as hereinbefore provided), and the number of one million (1,000,000) complete sets; and the Seller shall be under no liability for damages on account of any deliveries so cancelled, or refused. But such cancellation shall not affect the obligation of the Seller to deliver to the Buyer the balance of the complete sets of fuse parts covered by this contract, before August 1, 1923, or the later date to which the time for delivery may have been extended as aforesaid.

6. The Buyer shall have the right to cancel, or refuse to accept,

any deliveries for which the Seller may be in arrears on August 1, 1923, or on the later date to which the time for delivery may have been extended by reason of one of the causes mentioned in article "4" of this agreement, and, in no event, shall the Buyer be bound to take any parts not delivered prior to August 1, 1923, or such later date, nor shall the Seller be under any liability for damages, on account of any deliveries so cancelled, or refused. But, in the event of such cancellation, the advance payments made to the Seller with respect to any parts, which may have been cancelled or refused, shall be returned by the Seller to the Buyer.

7. So long as the Buyer shall perform any stipulations of this contract on his part, the Seller agrees to confine the use of his fuse and primer making facilities exclusively to the performance of this contract; but, upon completion, by delivery or cancellation, of the requisite number of parts, the facilities used in the manufacture of such parts so completed may be used, or disposed of, in such manner as the Seller may determine.

8. (a) If by reason of an embargo, the fuse parts and primer percussion parts cannot be exported from the United States, or in the event of the present war terminating, before all deliveries under this contract shall have been completed, the Buyer, at its option, may terminate this agreement; but, in such event, the Buyer shall pay to the Seller the unpaid purchase price of any fuse, or primer, parts then actually manufactured and accepted, and, in addition thereto, a sum sufficient to cover the actual net expenditures and outstanding obligations of the Seller and its subsidiary companies made or incurred in respect of the portion of the orders undelivered at the time of such termination, including therein any net expenditures, or obligations, for plant, equipment and material or services of skilled, or other, employees. To the extent, if any, that advance payments made under this contract may exceed the amount due to the Seller, in case of such cancellation, such excess of advance payments shall be returned to the Buyer.

(b) For the purpose of this contract, the "actual net expenditures" shall be defined to mean any sum, which the Seller shall have actually spent, and any obligation incurred after crediting the salable, or appraised, value of any material, or, in the case of other expenditures and obligations, such portion of the Seller's expenditures and obligations, in respect of this contract, as the unfilled portion of the orders at the time of cancellation bears to the total.

(c) It is expressly agreed that no expenditures shall be made in excess of the reasonable demand of this contract.

9. The sum of one million, three hundred and forty-five thousand (\$1,345,000) dollars, herewith paid by the Buyer to the Seller, shall be retained by the Seller and applied as an advance payment against the purchase price of seven hundred and fifty thousand (750,000) sets of shrapnel fuse parts and three million (3,000,000) sets of primer percussion parts, furnished, or to be furnished, under this agreement.

10. The Buyer agrees to settle for the shrapnel fuse parts delivered on or before March 1, 1923, not exceeding the number required to make up seven hundred and fifty thousand (750,000) complete sets, and for the primer percussion parts delivered on or before March 1, 1923, as follows:

(a) The Buyer shall credit forty-eight and 6/10 (48.6%) per cent of the value (as determined by the annexed schedule of prices) of the parts so delivered, against the advance payment of one million, three hundred and forty-five thousand (\$1,345,000) dollars, and the Buyer shall pay the remaining fifty-one and 4/10 (51.4%) per cent of the value of such parts to the Seller in cash contemporaneously with the execution of this agreement.

Payments for primer percussion parts, delivered after March 1, 1923, shall be made as follows:

(b) The Buyer shall credit forty-eight and 6/10 (48.6%) per cent of the value of each lot of primer percussion parts delivered against the advance payment of one million, three hundred and forty-five thousand (\$1,345,000) dollars, and shall pay to the Seller the remaining fifty-one and 4/10 (51.4%) per cent of such value, in cash, within ten days after the date of delivery. Payments for deliveries, after March 1, 1923, of such shrapnel fuse parts as taken together with those delivered prior to March 1, 1923, will constitute complete sets of shrapnel fuse parts, shall be made as follows:

(c) The Buyer shall credit forty-eight and 6/10 (48.6%) per cent of the value of each lot of shrapnel fuse parts, which taken together with those previously delivered, make complete sets, upon the advance payment of one million, three hundred and forty-five thousand (\$1,345,000) dollars, and shall pay to the Seller the remaining fifty-one and 4/10 (51.4%) per cent in cash, within ten (10) days after the date of delivery.

It is the intention of the parties hereto that the primer percus-

sion parts shall be paid for within ten days after the delivery of the same, but that the settlement and payment for shrapnel fuse parts delivered after March 1, 1923, shall not be made, unless deliveries of such parts, taken with those previously delivered, shall make complete sets, or unless those delivered during the term of this contract constitute complete sets of said shrapnel fuse parts.

11. The Buyer agrees to settle for the shrapnel fuse parts delivered by the Seller on or before March 1, 1923, in excess of the number required to make up seven hundred and fifty thousand (750,000) complete sets, as follows:

It is agreed that, for the purpose of this settlement, the value of the shrapnel fuse parts so delivered in excess of the number required to make up seven hundred and fifty thousand (750,000) complete sets, shall be \$137,859.20; that the Buyer has paid to the Seller, on account of the original contract, in addition to the advance payment of \$1,345,000, a net amount of \$46,692.22, which amount shall be credited upon the value of the excess parts so delivered; and the Buyer agrees to pay, in cash, to the Seller, contemporaneously with the execution of this agreement, the difference, viz., \$91,166.98.

12. The Buyer shall have the right, at any time, on or before sixty days from the date of this agreement, upon written notice to the Seller, to reduce the number of fuse bodies and concussion primer firing pins, designated as parts No. F-2 and F-56 complete, and the number of closing caps, designated as part No. F-3, from 750,000 to any number not less than 500,000. In the event of any such reduction in the number of parts Nos. F-2 and F-56 and F-3 to be delivered, the Seller shall pay to the Buyer 48.6% of the prices (viz. 67¢ and 20¢ respectively) of the parts so cancelled and be under no further liability to the Buyer in respect thereto; and such cancelled parts shall be eliminated in all computations of complete sets of fuse parts. The Buyer shall credit any such payment against the advance payment of \$1,345,000 hereinbefore specified.

13. Time is of the essence of this contract, in respect of the payments hereunder and in respect of all other undertakings and obligations of the parties hereto.

14. This agreement covers the entire understanding of the parties, and this contract shall take effect as of January 5, 1923, regardless of the date on which it may actually be executed.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

[Annex Specifications.]

No. 78.

Agreement by mining company to sell entire output of its mines and the output of the mines of any corporation in which it may own specified part of the capital stock.¹⁴

AGREEMENT, made January 5, 1923, between Doe Mining Co., a corporation, duly organized under the laws of the State of Delaware, and having an office for the transaction of business at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Seller"), and Koe Refining & Smelting Co., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Buyer"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The Seller shall sell to the Buyer, and the Buyer shall purchase from the Seller, during the period commencing with the date hereof and terminating on January 4, 1932, all the lead-silver ores, slimes and concentrates mined upon, or coming from, any and all properties owned, or leased, by the Seller in the Claremont District, in the State of Idaho, and all the lead-silver ores, slimes and concentrates from properties in the said district owned, or leased, by corporations in which, for the time being, the Seller shall own at least three-fourths of the outstanding capital stock, unless said corporations shall already be bound by agreement to sell and deliver their output to others; it being agreed, however, that said properties shall come within this contract, upon the expiration of any such agreement.

2. The lead-silver ores, slimes and concentrates delivered hereunder shall be of a lead assay of between forty (40) and seventy (70%) per cent, and the average product of the mines shall be,

¹⁴ Adapted from *Norman v. Fed. Mining & Smelting Co.* (1917), 180 App. Div. 325, 167 N. Y. Supp. 794.

approximately, of the same average analysis as the shipments made to the Buyer from the same mines during the twelve months immediately preceding the date of the commencement of shipments hereunder, unless the Buyer shall give its written consent to the shipment to it of lead-silver ores, slimes and concentrates varying in analysis from that standard. But this contract shall not apply to the zinc, or copper, productions of the said mines.

3. All provisions in this contract, relating to mines which may hereafter be acquired by the Seller, or owned, or leased, by corporations in which the Seller shall acquire stock, shall relate only to mines located in the Claremont District, whose product is similar in character to that shipped by the Seller to the Buyer, during the twelve months next preceding the date of the commencement of shipments hereunder.

4. The Buyer shall buy and accept delivery of all lead-silver ores, slimes and concentrates as hereinabove described, which the Seller shall tender for delivery, in accordance with this contract, as and when the same shall be tendered; and the Buyer shall pay therefor as hereinafter provided. The shipping, or receiving, of any product under this contract, shall not be deemed, or be, a waiver of any right to damages for any previous failure to ship, or receive, any products, in accordance with this contract.

5. For the purpose of determining the net sales price of the product to be delivered hereunder, the value of the product shall first be ascertained, as follows:

Silver: (a) For ninety-five (95%) per cent of the silver contents, at the quoted price for silver, which shall be given by Roe & Co. to the Western Union Telegram Co. on the date of the comparison of the original assays by the representatives of the parties hereto at the sampling works.

(b) If Roe & Co. shall discontinue the business of supplying such quotations, the parties hereto shall forthwith agree upon some other concern of recognized standing, whose quotations shall, for the purposes of this contract, take the place of those of Roe & Co. If the parties shall fail to agree upon such a successor, within ten (10) days, after either party shall have notified the other in writing of such discontinuance, such a successor shall be appointed by arbitrators, one of whom shall be selected by each party; but, if the two arbitrators shall be unable to agree, then the appointment shall be made by an umpire appointed by them. If either party shall fail

to appoint an arbitrator, within five (5) days after it shall have been notified in writing of the appointment of an arbitrator by the other party, or if the arbitrator of either party shall fail to act, within five (5) days after a written request so to do from the other arbitrator, the arbitrator of the party not in default may act alone, and his determination shall be final. Notices hereunder to the respective parties shall be delivered at their respective New York City offices.

Gold: For ninety-five (95%) per cent of the gold contents, at the rate of twenty (\$20) dollars per ounce, provided that a ton shall contain five one-hundredths of an ounce, or more, per ton. No payment shall be made for gold, if the gold contents shall be less than five one-hundredths of an ounce per ton.

Lead: For ninety (90%) per cent of the lead contents, 90% of the average sales price in the City of New York, for common desilverized domestic lead in lots of fifty (50) tons, or more, for shipment within thirty (30) days, as made by the Buyer, during the week preceding the week of the shipment of the lot in question, from the sampling works (that is to say, the average price of the total amount so sold for delivery in New York City), so long as such selling price shall be \$4.10 per 100 lbs. or less. Should such selling price exceed \$4.10 per 100 lbs., then the price to be paid in settlement for lead shall be 90% of \$4.10, plus one-half of the excess over \$4.10. Thus, if the selling price shall be \$4.20, then the price to be used in settlement hereunder shall be 90% of \$4.10, or \$3.69, plus \$.05, or a total of \$3.74.

6. The Buyer shall, once in each week, mail from its New York office to the Seller, at its New York office, a statement of its average selling price for common desilverized lead, during the preceding week; and said statement shall be subject to correction by the Seller in the following manner:

(a) Three reputable accountants shall be selected and agreed upon between the Buyer and the Seller, and such accountants, in rotation, may, at the request and expense of the Seller, examine the books of the Buyer, covering a period of two months immediately preceding the first day of the months of January, March, May, July, September or November of each year, during the life of this contract, and shall report to the Seller whether the average sales price of common desilverized pig lead (after taking into account such quantities as shall have been sold in lots of fifty tons or more,

and for shipment within thirty days) agrees with the average sales price thereof as reported by the Buyer to the Seller and used in settlement for the period in question.

(b) Such examination shall be begun within two months next following the two months' period to be covered by it, and shall be promptly concluded.

(c) The examination in question shall be deemed confidential, and the accountants shall not report to the Seller, or otherwise disclose, any fact ascertained in such examination other than the differences, if any, between said average sales prices as shown by the Buyer's books and the average sales prices used in settlement for the same period as reported to the Seller by the Buyer; and reports of said differences shall, also, be promptly made by the accountants to the Buyer; and the figures so reported by the accountants shall be final.

(d) Should the report of the accountants show that the average sales price, during the period in question, has differed from that reported to the Seller by the Buyer and used in settlement, then bills shall immediately be made by either the Seller or the Buyer, as the report may warrant, for the differences so arising, and such bills shall be paid on presentation thereof at the New York City office of the Seller or of the Buyer, as the case may be.

From the value of the gold, silver and lead ascertained as hereinbefore provided, the following deductions shall be made, and the figures so reached shall be the net sales price of the products hereunder:—

(a) A deduction shall be made equal in amount to eight (\$8) dollars per ton of two thousand (2,000) pounds, dry weight, plus the freight charges on such products from the mines, or mill, of the Seller, to the smelter of the Buyer, at Pueblo, or Denver (including the freight from the mine, or mill, to Wallace, and from Wallace to Denver, or Pueblo, if deliveries shall be made at Wallace, as provided in article "7" of this agreement). The Buyer shall have the right to designate the destination and routing of the products of the Seller, which are to be shipped hereunder; but, should any product be shipped to any destination other than Denver or Pueblo, the deduction shall be the same as if it had been shipped to Denver or Pueblo.

(b) A deduction of fifty (50¢) cents per ton shall be made for each one (1%) per cent, or fraction of one (1%) per cent, of zinc

contained in excess of ten (10%) per cent. For the purpose of arriving at this zinc allowance, the zinc assays of the receipts at each smelting plant from each mine of the Seller shall be averaged separately for each calendar month.

(c) The percentage of moisture to be deducted from the gross weight of the ore, shall be determined by the customary methods.

(d) If, at any time, the results of sampling the productions delivered hereunder, at any of the smelting plants to which the product shall be consigned, shall be unsatisfactory to the Buyer, the Buyer shall immediately notify the Seller, in writing, and the lot whose results are unsatisfactory, together with the next nine lots thereafter consigned hereunder to such plant, shall be sampled at such smelting plant for the purpose of a revision of the settlement. The Seller may, at its option, inspect the sampling of such lots at the smelter, and the results of such sampling shall be used in final settlement hereunder, and any difference between such final settlement value and the provisional settlement value shall be immediately paid over to the party to whom such difference shall be found to be due. The sampling at the smelter shall be practised in accordance with the usual methods, and, if any umpiring shall become necessary, the umpires mentioned in article "11," subdivision (b), shall be selected in rotation. For the purpose of re-sampling, the Buyer shall keep not less than a tenth portion of the lot for a period not exceeding fifteen (15) days after the completion of the original sampling.

7. Deliveries under this contract shall be made to the Buyer, at the sampling works at Wallace, Idaho, in not less than carlots, on board cars for shipment from Wallace after sampling. All unloading and reloading, in connection with the sampling at Wallace, shall be at the expense of the Seller. The weighing and sampling of all ores shall be conducted by the Seller, at the sampler at Wallace, by the usual commercial methods in vogue at said sampling works, as heretofore operated by the Buyer, and the result of this sampling and assaying shall be accepted provisionally, in settlement of all ores shipped by the Seller.

8. During the process of weighing, sampling and assaying the ores, the Buyer may be represented by its own representative, who shall be a skilled assayer. Should it fail to keep such a representative, at said sampling works, the Seller may, upon five days'

telegraphic notice, to the Buyer, at its Denver office, proceed with its own assayer.

9. Of each lot, or product, sampled at the sampling works, the Seller shall prepare five samples, as follows: (1) for mine, (2) for sampler, (3) for smelting assayer, (4) for umpire, and (5) for extra control.

10. Should any question, or dispute, arise as to the sampling, a representative of either party, or the representatives of both parties, may forthwith demand and receive from the manager of the sampling works, a sample of the entire lot of ore in controversy, or a re-sample from the reserve sample sack product (hereinbefore called "(5) for extra control"), and this re-sample shall be taken for provisional settlement.

11. (a) In making assays, each of the parties shall be represented by an assayer. The results of the two assayers shall be compared by the manager of the sampling works and the representative of the Buyer, and provisional settlement shall be effected by splitting the differences evenly between the assays, where the difference does not exceed 0.4 ounce on silver running thirty ounces, or under, to the ton of ore, or 0.6 ounce on silver running above thirty ounces to the ton, or 0.5% on lead of all grades of ore.

(b) If, however, the assays should not agree within these limits, each assayer shall repeat his work. If, after such repetition, the assayers shall still fail to agree within the said limits, the umpire sample, described above as "(4) for umpire," sealed with the seals of both parties hereto, shall forthwith be submitted by the Seller to an umpire to be selected in rotation from the following: John Smith, Richard Jones and Thomas Brown.

(c) If the results obtained by the umpire shall be between the results obtained by the assayers for the two parties, the umpire's result shall be accepted. If the result obtained by the umpire shall be above, or below, the results obtained by the assayers for both parties, the assay of the party nearest to that of the umpire shall be accepted in settlement, or the Seller, or the Buyer, may request a repetition of the assay by the umpire; and, if the result of this repeated assay of the umpire shall not be between the results obtained by the two parties hereto, the assay of the party nearest the umpire's assay shall be accepted in settlement; but any such acceptance, or settlement, shall be subject to the provisions of article "6" hereof.

(d) The cost of assay by the umpire shall be paid by the party, whose assay differs most from that of the umpire.

12. If the Seller, at any time during the continuance of this contract, shall cease to possess and control the sampling works hereinbefore mentioned, at Wallace, Idaho, or to operate the same, or to sample and assay there, the products hereunder agreed to be sold, except as provided in article "16," or if any such cessation under article "17" shall have continued for thirty days, or upwards, then, during the period that the Seller shall not own, or control, or operate, the said sampler, products delivered hereunder shall be sampled and assayed at the mills of the Seller, at its mines, in like manner as in this contract provided in respect of sampling and assaying at the said sampler at Wallace; and, in this event, deliveries under this contract shall be made f.o.b. cars at the mills of the Seller aforesaid; but the Seller shall, nevertheless, be bound by this contract to conduct at Wallace the sampling to be done by it under this contract at all times when not excused from such sampling by said article "16," and the Seller shall, in all cases, resume operations at the sampler at Wallace, and do any re-building necessary for that purpose, as soon as practicable.

13. Payments shall be made hereunder, as follows:

(a) After the value of the ores, slimes and concentrates is ascertained as provided in articles "5" and "6," a sight draft, on account of the purchase price, may be drawn by the Seller against the Buyer, at such of its offices as the Buyer shall, from time to time, designate, and, in default of such designation, on the Buyer's office at New York City. Said drafts shall be based upon the results obtained by said sampling, and shall be accompanied by railroad bills of lading, covering such ores, slimes and concentrates and assay certificates therefor evidencing the right to said draft, and the Buyer shall pay said drafts on presentation.

(b) Such draft shall be for the net sales price ascertained as provided in articles "5" and "6" hereof, except that lead shall be figured at \$3.50 per 100 pounds, instead of 90% of the Buyer's average sales price of lead there mentioned, unless such 90% of such average sales price would be less than \$3.70 per 100 pounds. If such 90% shall be less than \$3.70 per 100 lbs., then such draft shall be for 90% of the sales price of the shipment, as ascertained in said article "5."

(c) The difference between the amounts of such drafts and the

settlement value, or sales price, of the shipments, shall be paid by the Buyer to the Seller on the 15th day of the month following the settlement of the value of the ores, at the sampling works.

14. The Buyer shall have the right to divert any of the production covered by this contract to any smelting works, wherever located, and whether such smelting works shall be owned by the Buyer, or by other parties. Settlements on any product thus diverted, however, shall be made to the Seller, in accordance with the provisions of this contract.

15. No mixture of slimes with concentrates shall be permitted, but each class of product shall, in all instances, be shipped in separate cars to the smelting plants. The Seller may, at its option, however, consider two, or more, classes of product as one lot for settlement purposes, provided, however, that no physical mixing of products of diverse character shall be permitted.

16. (a) Acts of nature, or of the public enemy, shortage of labor, or strikes, or lockouts, of any kind, or process, or mandate, of any court, preventing, or delaying, the shipment, or receipt, of the product hereunder, shall, during their continuance, excuse a failure to deliver, or to receive, products hereunder, but shall not lessen the obligations of the respective parties, the one to deliver, and the other to receive, the total actual silver-lead ores, slimes and concentrates product of the said properties, during the term of this agreement, save in respect of ore actually sold to others under the express provisions of article "17" of this agreement.

(b) In case of the happening of any occurrence referred to in this article, each party shall be entitled to excuse by reason thereof, only upon prompt written notice to the other party.

17. Where the Buyer shall have taken products hereunder for one of its smelters, any of the occurrences mentioned in article "16," preventing delivery of the products to said smelter, or treatment of said products thereat, or shortage of fuel for such treatment, shall, during the period of the existence of the said occurrence, excuse the Buyer from the receipt of products hereunder to the extent of the said period's proportion of the immediately preceding year's average shipment to said smelter; but the Buyer may, at its option, take said product for any of its smelters and shall use its best efforts to do so. So long, however, as, and to the extent that, the Buyer shall not take such product, or divert the same to other smelting plants owned by itself, or others, the Seller may sell and

deliver the same to others. If the Seller shall not in fact sell the same to others, the Seller shall remain under its general obligation to deliver the same, and the Buyer shall remain under its general obligation to take the same, upon the expiration of said disability, as part of the product of said mines.

18. Inasmuch as, under the provisions of this contract, the freight on moisture contained in the ore, slimes and concentrates is for the account of the Buyer, it is agreed that the Seller shall exercise every reasonable endeavor to dry the material to the utmost practical extent before shipment.

19. (a) Should the Seller, during the period commencing with the date of the beginning of shipments hereunder and terminating on the date of the expiration of this contract, acquire any mining properties, the entire output of which shall, at that time, be under contract for sale and delivery to the Buyer, it is agreed that the output of each such mining property shall, during the life of this contract thereafter, be sold, delivered and settled for upon the terms set forth in this agreement, and the same shall, in all respects come within, and be deemed to be covered by, this contract, and the then existing contract with the Buyer, relating to the output from any such property, shall be deemed void as to shipments made after the acquirement of said property by the Seller.

(b) The provisions of this article shall, also, apply to all property owned by any corporation of whose outstanding stock the Seller shall hereafter become the owner of, or acquire, at least seventy-five (75%) per cent, during its ownership of said stock.

20. Upon the Seller being shown by the Buyer a valid option obtained by the Buyer to purchase either the Milton Mines or the Hendrick Mines, at any time during the life of this contract, the Buyer may be required by the Seller to disclose the contents of all contracts in existence at that time between the Buyer and any of said mines, or the persons, firms or corporations owning the same.

21. (a) The Seller, in further consideration of the premises, agrees that, in the event that it shall sell, lease, or otherwise dispose of any or all of its mining property, or dispose of its stock in a company, or companies, owning, or leasing, mining property producing the ore covered by this agreement, during the period covered by this agreement, it will, at its option, obtain the previous written consent of the Buyer to such sale, lease or disposal, or will cause its successors and assigns in interest in such mining property,

or stock, to agree with the Buyer to assume, fulfill and carry out each, every and all the agreements, assumptions and covenants with respect to the sale of products herein set forth, to be kept and performed by the Seller, and to make a covenant with the Buyer, which shall require similar agreements, assumptions and covenants to those in this article provided for on any subsequent transfer of any such property.

(b) In the event that the Seller shall not obtain the previous written consent of the Buyer herein to such sale, lease or disposition, the Seller, notwithstanding any such sale, lease or other disposition of any such mine or stock, shall be and remain responsible and liable to the Buyer for the due sale and delivery, according to the provisions hereof, of all the product to be sold to the Buyer, and the Seller agrees that such sale and delivery shall be so made.

22. The years mentioned in this contract shall be calculated from February 5th to February 4th inclusive, and shall not be calendar years.

23. This agreement shall be binding upon, and inure to, the benefit of the successors and assigns of the respective parties hereto, and all its provisions relating to the sale of ore shall, as to the Seller, be deemed to be, and considered as, a covenant running with the land.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective Presidents, thereunto duly authorized, and their corporate seals to be hereunto affixed, respectively, attested by their respective Secretaries, the day and year first above written.

Doe Mining Co.,
By John Doe,
President.

(Seal)

Attest:

John Green,
Secretary.

Koe Refining & Smelting Co.,
By Henry Koe,
President.

(Seal)

Attest:

John Koe,
Secretary.

**SECTION 4.—AGREEMENTS TO SELL MERCHANDISE
WHEREUNDER BUYER IS GIVEN EXCLUSIVE
SALES TERRITORY.**

No. 79.

Agreement to sell liquid polish, whereunder buyer is given exclusive right of re-sale in the United States.¹⁵

New York City,
January 5, 1923.

Mr. John Doe,
No. 11½ Broadway,
New York City.

Dear Sir:

Below, we confirm the verbal agreement recently made by you with us, through our Mr. Roe, viz.:

We hereby agree to purchase from you one hundred (100) gross of four (4) ounce bottles of your liquid cleaning preparation, called "Doe Polish," at the price of ten (\$10) dollars per gross, and in consideration thereof, you agree to give us the sole and exclusive right to sell "Doe Polish" in the United States, for the period of ten (10) years from the date hereof.

It is agreed that any further orders given to you shall be for not less than one hundred gross in amount. If we shall not, during any year of this contract, purchase from you two thousand (2000) gross of the said four (4) ounce bottles of "Doe Polish," then, and in such event, you shall have the right to terminate this agreement, by notifying us in writing of your election to do so.

During the continuance of this contract, it is agreed that you shall not disclose the composition of your said liquid cleaning preparation, nor sell the same, within the United States, under any name, to anyone else.

It is further agreed that you shall fill our orders for this preparation, during the term of this contract, at the price of ten (\$10) dollars per gross of full four (4) ounce bottles; but, if the present market price of the chemicals used in manufacturing such preparation shall decrease, or increase, it is agreed that there shall be deducted from, or added to, said price, as the case may be, the amount of such decrease, or increase.

¹⁵ *Cf. Fuller v. Hope* (1894), 163 Pa. St. 62, 29 Atl. 779.

If the above agrees with our verbal agreement, your signature, under the words "agreed to and accepted," will constitute this a contract with us.

Yours very truly,

Roe & Co.,
By Richard Roe,
President.

Agreed to and Accepted,
January 5, 1923.
John Doe.

No. 80.

Agreement to buy definite amount of merchandise, during the year, whereunder the buyer, also, purchases exclusive sales territory.¹⁶

AGREEMENT, made January 5, 1923, between John Doe, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal place of business at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Manufacturer"), and Richard Roe, residing at No. 56 State Street, Chicago, Illinois (herein called the "Retailer"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. This agreement shall begin on January 5, 1923, and end on January 4, 1924.

2. (a) The Retailer agrees to buy from the Manufacturer, and the Manufacturer agrees to sell to the Retailer, coats, suits and millinery made by the Manufacturer (herein called "merchandise"), of the total wholesale price of ten thousand (\$10,000) dollars, exclusive of all discounts.

(b) The Retailer shall select and order such merchandise in the following amounts, and at the following times, to wit:

<i>Articles</i>	<i>During 1st Six Months</i>	<i>During 2nd Six Months</i>
Coats	\$2,000	\$2,000
Suits	2,000	1,500
Millinery	1,000	1,500

(c) The Retailer shall pay for such merchandise the wholesale prices fixed therefor by the Manufacturer, which shall be the same

¹⁶ Cf. *Newell v. Meyendorff* (1890), 9 Mont. 254, 23 Pac. 333, 18 Am. St. Rep. 738, 8 L. R. A. 440.

prices at which the Manufacturer shall sell such merchandise to other retailers.

(d) All merchandise purchased shall be paid for, minus a discount of ten (10%) per cent, within ten days from the date of shipment.

3. All merchandise purchased shall be delivered f.o.b., at New York City, by the Manufacturer, who shall declare the full retail value thereof to the initial carrier, unless the Retailer, in writing, shall have instructed the Manufacturer not so to do.

4. (a) The Manufacturer gives to the Retailer the exclusive right, during the term of this agreement, to sell said merchandise in the following territory, viz.: Chicago, Illinois; and the Manufacturer agrees not to sell any of such merchandise in said territory, except to the Retailer; provided, however, that the Manufacturer may sell one model or more, of any of said articles of merchandise to any dressmaker engaged in business within said territory, upon the agreement of such dressmaker not to advertise the fact that such dressmaker is selling any models of the Manufacturer, or copies thereof. But nothing herein contained shall be deemed to authorize, or empower, the Retailer to act as agent, or conduct business in the name, or for the account, of the Manufacturer.

(b) The Retailer agrees to pay the Manufacturer for such exclusive right as aforesaid, the sum of five thousand (\$5,000) dollars, in cash, or by certified check, at, or before, the execution and delivery of this agreement. And it is agreed that such sum shall not be deemed to be accepted, or received, by the Manufacturer, either in payment of, or on account of, or in reduction of, the amount of merchandise hereinbefore agreed to be purchased by the Retailer; nor shall such sum, at any time, be returned to the Retailer.

(c) All territorial and other rights herein granted to the Retailer shall have no reference to any other articles of merchandise that are, or may be, manufactured, or sold, by the Manufacturer, except the particular classes of merchandise to be purchased hereunder by the Retailer.

(d) The Retailer shall use all reasonable efforts to promote and protect the good name of the Manufacturer, throughout said territory, but shall not solicit, or accept, orders for, nor sell or deliver, outside of said territory, any merchandise made by the Manufac-

turer, without first obtaining the written consent of the Manufacturer hereon endorsed:

5. (a) The Retailer shall not remove, change, or add to, the labels affixed by the Manufacturer to, or in, the merchandise to be purchased, as aforesaid; and it is expressly understood that no rights whatever are conferred upon the Retailer hereunder, except in connection with the labels as placed by the Manufacturer in said merchandise.

(b) The Retailer shall not copy, or imitate, nor make, sell, or offer for sale, any copy, or imitation, of any merchandise purchased from the Manufacturer, nor sell, or deliver, any of such merchandise to any other manufacturer or retailer.

6. (a) The Retailer shall not transfer, assign, or, in any manner, encumber, this agreement, or any part thereof, or any rights, or benefits, thereunder, without first obtaining the written consent of the Manufacturer hereon endorsed.

(b) If the Retailer shall discontinue business, or shall sell his business, or an interest therein, or if the Retailer shall be adjudicated a bankrupt, or insolvent, or if a receiver of the Retailer's property shall be appointed, or if the Retailer shall make a general assignment for the benefit of creditors, or if any judgment against the Retailer shall remain unbonded, undischarged, or unpaid, of record for thirty (30) days, or longer, then, and in any such event, the Manufacturer may, at its option, cancel and annul this contract, by mailing a written notice to that effect to the Retailer, at the Retailer's last known place of business.

7. The Manufacturer shall indemnify the Retailer against any suit, or action, which may be brought by any one, who may claim as against the Retailer the right to use the labels or sell the merchandise of the Manufacturer, within the Retailer's said territory; provided, however, that the Retailer shall forthwith notify the Manufacturer, at its principal place of business in New York City, if and when any claim thereto shall be made to, or upon, the Retailer, and provided further, moreover, that the Manufacturer shall be immediately informed by the Retailer, both in writing and by telegraph, if and when any writ, summons, complaint or any other paper, in any such action, or proceeding, based upon any such claim, shall be served upon the Retailer; and, in such event, the Retailer shall permit the Manufacturer, if it so elects, to have the

defense and trial thereof conducted in the name and behalf of the Retailer, but at the Manufacturer's expense.

8. That no representations, except such as appear herein, have been made to the Retailer.

IN WITNESS WHEREOF, the Manufacturer has hereunto signed its name, by its President, and caused its corporate seal to be affixed, attested by its Secretary, and the Retailer has hereunto set his hand and seal, the day and year first above written.

John Doe, Inc.,
By John Doe,
President.

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

No. 81.

Agreement to sell neither less, nor more, than specific quantity of asphalt, for re-sale in specific territory.¹⁷

AGREEMENT, made January 5, 1923, between John Doe, Inc., a corporation, duly organized under the laws of the State of California, and having its principal office at No. 15 State Street, Los Angeles, California (herein called the "Seller"), and Richard Roe, residing at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "Buyer"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The Seller agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, during each year, for the period of five (5) years from the date hereof,

(a) Not less than one hundred (100) tons, and not more than two hundred (200) tons, of liquid, or flux, asphalt, containing not less than ninety-four (94%) per cent of bitumen, at the price of twenty (\$20) dollars per ton of two thousand (2000) pounds, without allowance for tare; and

(b) Not less than nine hundred (900) tons, and not more than eighteen hundred (1800) tons, of Doe asphalt, containing not less than ninety (90%) per cent of bitumen, at the price of twenty

¹⁷ Adapted from *Stemmerman v. Kelly* (1917), 220 N. Y. 756, 116 N. E. 1077.

(\$20) dollars per ton of two thousand (2000) pounds, without allowance for tare.

2. The Buyer shall order such liquid, or flux, asphalt to be shipped at the rate of not less than eight and one-third ($8\frac{1}{3}$) tons in each month of each of said years; but shall not, in any one year, order more than two hundred (200) tons of such asphalt.

3. The Buyer shall order such Doe asphalt to be shipped at the rate of not less than seventy-five (75) tons, and not more than three hundred and fifty (350) tons in any one month of each of said years, provided, however, that the Buyer shall give to the Seller, at least fifteen (15) days' notice in writing in advance of the shipment of any amount of Doe asphalt ordered, at one time, in excess of one hundred (100) tons. But the Buyer shall not, in any one year, order more than eighteen hundred (1800) tons of such Doe asphalt to be shipped.

4. That, upon delivery to the Buyer, at his office in New York City, of the invoices and bills of lading, covering any liquid, or flux, asphalt, or Doe asphalt, which shall have been ordered by the Buyer, the Buyer shall pay therefor, by executing and delivering to the Seller his promissory note for the full amount thereof, payable to the order of the Seller, without interest, ninety (90) days from the date of shipment of such asphalt from Los Angeles, California, and which said note shall bear the endorsement of some responsible person, or persons, who shall have a capital of at least twenty thousand (\$20,000) dollars, and a rating, in respect of credit, of "good" or "high," as shown in the then current mercantile agency reference book of R. G. Dun & Co., or of Bradstreets; and, in default thereof, the Buyer shall pay the purchase price of such asphalt in cash.

5. The Buyer agrees:

(a) That the acceptance of orders for more than the maximum amount of liquid, or flux, asphalt, or of Doe asphalt, in any one year, shall not reduce the amount, or amounts thereof, provided for in any other year; and

(b) Not to sell, deliver, or use, any of such asphalt outside of the City of New York, nor permit the same to be used for any purpose whatsoever outside of the City of New York, except after first obtaining the written consent thereto of the Seller.

6. During the continuance of this contract, the Seller shall not sell any liquid, or flux, asphalt, or Doe asphalt, for use for street

paving purposes in the City of New York to any one other than the Buyer, and shall, upon ten days' notice in writing from the Buyer, cancel and annul any agreement it may have to sell such Doe asphalt, or liquid, or flux, asphalt to any other person, or persons, or to any corporation, or corporations, who may, or shall, use such Doe asphalt, or liquid, or flux, asphalt, for street paving purposes in the City of New York, or who may, or shall, sell the same for any such use, or purpose.

7. In the event of the non-payment, at maturity, of any note delivered by the Buyer, or in the event of the breach by the Buyer of any agreements herein contained, in respect of the purchase of Doe asphalt, or liquid, or flux, asphalt, or the use thereof without the City of New York, the Seller may, at its option, cancel and annul this contract, and hold the Buyer liable for any breach, or breaches, of this agreement, existing at the date of any such cancellation. But the existence of this right to cancel shall not, in the event of its non-exercise, diminish, or change, the rights of the Seller.

8. This contract shall bind the parties hereto, and their heirs, administrators, successors and assigns.

IN WITNESS WHEREOF, the Seller has caused its corporate name to be signed by its President, thereunto duly authorized, at the City of Los Angeles, California, and its corporate seal to be affixed, attested by its Secretary, this 10th day of January, 1923, and the Buyer has hereunto set his hand and seal, at the City of New York, this 5th day of January, 1923.

John Doe, Inc.,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

SECTION 5.—AGREEMENTS RELATING TO SALE OF BUSINESS.**No. 82.**

Agreement to sell business, including building, factory, good-will, stock in trade, and trade-marks, with covenant by seller not to engage in the same business.¹⁸

AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Seller"), and Richard Roe Co., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Buyer"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That the Seller shall, on or before February 1, 1923, at his own expense, by good and sufficient deed, or deeds, of conveyance, grant and convey to the Buyer, in fee simple, free of all liens and encumbrances whatsoever (excepting a mortgage thereon, heretofore executed and given by the Seller to secure the payment of the sum of five thousand (\$5,000) dollars, with interest), all that certain plot of land in the Borough of Manhattan, New York City, with the match factory and other buildings thereon erected, known as No. 37½ Broadway.

2. That the Seller shall, on or before February 1, 1923, sell and deliver to the Buyer, clear of all liens and encumbrances:

(a) All the articles, machinery, tools, implements and appliances of every kind whatsoever, used, or designed to be used, in the manufacture of matches, which are now in the said buildings;

(b) All the articles and items enumerated in the schedule hereto annexed:

(c) All articles, items of machinery, tools, implements and appliances that may have been omitted from said schedule, but are now used, or designed to be used, by the Seller in the prosecution of the said match business;

(d) The good-will of the match business, and the use of the name of the Seller therein; and

¹⁸ Adapted from *Diamond Match Co. v. Roeber* (1887), 106 N. Y. 473. 13 N. E. 419.

(e) The exclusive right to all his trade-marks and labels as used and owned by him, in connection with the said match business.

3. That the Buyer shall issue and deliver to the Seller two hundred and eighty (280) shares of its capital stock, of the par value of one hundred (\$100) dollars each, upon the execution and delivery of a deed of conveyance of said land and premises as aforesaid, and upon the sale and delivery of all the articles, machinery, tools, implements and appliances as aforesaid, with the good-will of the said match business and the use of the name of the said John Doe and the exclusive right to all of his trade-marks and labels as aforesaid; and that, as a part of the consideration thereof, the Buyer shall assume and pay, or cause to be paid, the aforesaid mortgage of five thousand (\$5,000) dollars, with the interest thereon.

4. That the Seller shall, on or before February 1, 1923, sell and deliver to the Buyer, free and clear of all encumbrances, all of his stock of finished and unfinished goods, or materials, for making matches, and the Buyer agrees to purchase said stock of goods and materials, at the price that shall be agreed to be fair and equitable by the parties hereto; but, if the Buyer and Seller shall be unable to agree upon such price, then, and in such event, the price shall be determined by arbitration, as follows:

Either party may give written notice to the other of his, or its, desire to submit the matter to arbitration, and may designate an arbitrator. Within five days after the receipt of such written notice, the other party shall serve upon the party invoking the arbitration, a written notice designating an arbitrator in his, or its, behalf. The two arbitrators so chosen shall, within five days thereafter, designate a third arbitrator. The three arbitrators shall thereupon promptly proceed to hear and determine the controversy, shall fix a time within which the matter shall be submitted to them by both parties hereto, and shall, within ten days after such final submission, render their decision. If the three arbitrators shall be unable to agree, the decision of two of them shall be binding and final, and the parties hereto agree to abide by such decision. The arbitrators, in their decision, shall, also, designate which party shall bear the expense of the arbitration.

5. The Seller covenants that, upon the delivery to him of the said capital stock of the Buyer, he, the said Seller, shall, and will, become bound unto the Buyer in the penal sum of twenty thousand

(\$20,000) dollars as liquidated damages, that he, the said Seller, shall not, and will not, at any time thereafter, directly or indirectly, engage in the manufacture, or sale, of matches, within the limits of the United States and the territories thereof, except the state of Nevada, nor aid, or assist, anyone else to do so, within the said limits, nor have any interest, directly or indirectly, in the business of manufacturing and selling matches, within the said limits, excepting as an employe of the Buyer.

6. That each party hereby binds himself to the other in the penal sum of fifteen thousand (\$15,000) dollars, for the true performance of all and every one of the covenants and agreements hereinbefore set forth.

IN WITNESS WHEREOF, the Richard Roe Co. has hereunto set its name, by its President thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary, and the said John Doe has hereunto set his hand and seal, the day and year first above written.

Richard Roe Co.,
By Richard Roe,
President.

(Seal)

Attest:

John Jones,
Secretary.

John Doe (L.S.).

[Annex Schedule of All Machinery, Tools, Implements and
Machinery.]

No. 83.

Agreement by corporation about to terminate its existence to sell its business and trade-name, in consideration of stock issued to it by buying corporation.¹⁹

THIS AGREEMENT, made January 5, 1923, between Doe, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Seller"),

¹⁹ Adapted from *Corn Products Refining Co. v. U. S.* (1919), 249 U. S. 621, 39 Sup. Ct. Rep. 291, 63 Law ed. 805.

and Richard Roe Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 371½ Broadway, Borough of Manhattan, New York City (herein called the "Buyer"), WITNESSETH:

WHEREAS, the Seller proposes to terminate its corporate existence and owns certain assets hereinafter set forth, which it desires to dispose of; and

WHEREAS, the Buyer is willing to purchase said assets and has eleven hundred and five (1105) shares of its unissued common stock of the par value of one hundred (\$100) dollars each, which it proposes to exchange for the assets of the Seller hereinafter set forth:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the Seller agrees to sell and deliver to the Buyer, and the Buyer agrees to purchase from the Seller, all of its equipment, manufactured stock, raw material, supplies, unexpired leases, and unexpired insurance in effect, as set out in the schedule hereto attached, and hereby made a part of this contract, and, also, the sole right to use the trade-name "Doe, Inc."; and the Seller agrees, upon the request of the Buyer, to execute and deliver to the Buyer all instruments that may be necessary to effect the transfer of such tangible and intangible property.

2. That, in consideration of the above, the Buyer agrees to sell, assign and deliver to the Seller eleven hundred and five (1105) shares of its common stock of the par value of one hundred (\$100) dollars each.

3. That the assets set out in the schedule hereto attached, and made a part hereof, are those which the Seller owned on December 31, 1922; and, if any of the assets therein set forth shall have been disposed of by the Seller to others between December 31, 1922, and the day of the execution of this agreement, and such assets shall not be delivered to the Buyer, the Seller shall pay to the Buyer an amount of money equal to the value placed upon the same in the said schedule.

4. That delivery of the assets hereby sold shall be effected, by the execution of this agreement, and delivery of the shares of stock in payment of the same shall be made by the Buyer, within thirty (30) days of the execution of this agreement.

IN WITNESS WHEREOF, each of the parties hereto has hereunto

set its name, by its President thereunto duly authorized, and affixed its corporate seal, attested by its Secretary, the day and year first above written.

Doe, Inc.,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe Co., Inc.,
By Richard Roe,
President.

(Seal)

Attest:

Henry Koe,
Secretary.

[Annex Schedule of Property.]

No. 84.

Same—another form.²⁰

THIS AGREEMENT, made January 5, 1923, by the Doe Steel & Wire Company, a corporation, organized under the laws of the State of Illinois, and having a place of business at No. 11½ State Street, Chicago, Illinois (herein called "the First Party"), and Richard Roe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called "the Second Party"),
WITNESSETH:

WHEREAS, more than two-thirds of the stockholders of the First Party desire to abandon the corporate enterprise, surrender their charter, franchise and corporate name, and dissolve the First Party, and the holders of over ninety-nine (99%) per cent of all the capital stock of the First Party have requested the execution of this agreement; and

WHEREAS, the Second Party has offered to pay, for the corporate assets and property of the First Party, the sum of twenty-five million, four hundred and forty thousand (\$25,440,000)

²⁰ Adapted from *U. S. v. U. S. Steel Corp.* (1919), 251 U. S. 417, 40 Sup. Ct. Rep. 293, 64 Law ed. 343.

dollars, in the manner hereinafter provided, and, also, to fully pay the corporate debts and completely discharge the corporate liabilities of the First Party, and has further offered to assume, perform and liquidate all of its outstanding contracts and obligations of whatsoever nature or kind; and

WHEREAS, in the best judgment of the board of directors and managers of the First Party, the acceptance of such offer of the Second Party will be advantageous to its stockholders and will realize for them much more than could be obtained, if the sale of the corporate assets and property were delayed, and will result in a much larger distributive share to stockholders of the First Party than can otherwise be obtained:

NOW, THEREFORE, THE PARTIES HERETO HEREBY COVENANT AND AGREE TO AND WITH EACH OTHER, AS FOLLOWS:

FIRST. A. That the First Party hereby agrees to grant, bargain, sell, assign, transfer, convey, and set over, and hereby does grant, bargain, sell, assign, transfer, convey and set over unto the Second Party and his assigns, all and singular the following corporate assets and property, *viz.*:

(a) The following manufacturing plants of the First Party, and the lands upon which the same are situated, and the lands adjacent thereto, or held, or owned, in connection therewith, and all the buildings, fixtures, machinery, tools, implements, utensils, supplies, etc., thereon and therein, namely:

1. Plant and property thereon and therein, known as "The Doe Plant," located at Cleveland, County of Cuyahoga, State of Ohio.

2. Plant and property thereon and therein, known as "The Doe Manufacturing Co. Plant," located at Doeville, County of DeKalb, State of Illinois.

(b) All and singular any other property, real, personal or mixed, of the First Party, wheresoever situated, including machinery, goods, chattels, wares, merchandise, stock on hand, supplies, iron, steel, coal, lumber, fuel, materials manufactured and unmanufactured, or in process of manufacture.

(c) All and singular the choses in action of the First Party, including the shares of stock and evidences of indebtedness of any corporation, bills of exchange, drafts, notes, accounts receivable, moneys on hand, causes of action, judgments, debts, bonds, contracts, insurance policies of every kind, and obligations of every nature and description.

(d) All letters patent, licenses, patterns, labels, trade-marks, trade-names, trade-rights, trade-secrets and good-will, all patents and applications for patents, and rights to, or under, or in connection with, patents, or applications therefor; books of record, books of account, deeds, plans, designs, letters, documents, and other writings whatsoever, and all rights, privileges, and licenses whatsoever of the First Party.

(e) All the leases and leasehold rights and interests of the First Party of any and all property, including the warehouses, improvements and fixtures and properties situated, as follows:

1. Portland, Oregon.
2. Seattle, Washington.
3. Indianapolis, Indiana.
4. Baltimore, Maryland.

B. The First Party further agrees that, for convenience of record, or proof, the several parcels of land, which are embraced in this article of this agreement, shall be conveyed by separate deeds, and the several plants and all fixtures, or other property, real, personal, or mixed, thereon and therein, shall be transferred by separate bills of sale to the Second Party, or his nominees, or assigns, as he, or they, may, from time to time, request.

SECOND. The Second Party, in consideration of the foregoing sale, assignment and transfer, hereby covenants and agrees with the First Party to pay, or cause to be paid, to the directors of the First Party, the said sum of twenty-five million, four hundred and forty thousand (\$25,440,000) dollars, for the account of its stockholders, to be distributed among them, at the rate of one hundred and six (\$106) dollars per share, which shall be forthwith paid to and distributed among the holders and owners of said shares of the preferred and common stock, according to their respective distributive proportions thereof, at said rate.

THIRD. In consideration of the aforesaid assignment and conveyance, the Second Party hereby further covenants and agrees to assume and fully pay the corporate debts and completely discharge the corporate liabilities of the First Party, and to assume, perform and liquidate all of its outstanding contracts and obligations of whatsoever nature and kind, and covenants and agrees to indemnify and hold it, the said First Party, its directors, officers, and stockholders, harmless from, and against, all claims, demands, liabilities, costs and expenses, now existing, or arising, or that may hereafter

arise, in connection with any such debts, liabilities, contracts and obligations whatsoever. And to more effectually secure the performance of this covenant and undertaking on the part of the Second Party, it is covenanted and agreed that the First Party shall be deemed to retain, and is hereby granted, a vendor's lien upon all the property conveyed and transferred, and to be conveyed and transferred hereunder, until the Second Party shall have fully paid, discharged and performed the debts, liabilities, contracts and obligations so to be assumed by him, as aforesaid.

FOURTH. The First Party covenants with the Second Party and his assigns, that it will, at any time, or times, hereafter, upon the request of the Second Party, or his assigns, or his, or their, counsel, do, make, execute and deliver any and all such other and further acts and deed, or deeds, or instruments, in the law, for the more full and effectual vesting and confirming unto the Second Party, or his assigns, the title to, and possession of, all of the real and personal property hereby agreed to be sold, assigned and transferred, and every part and parcel thereof; and, further, the First Party covenants with the Second Party, and his assigns, to warrant and forever defend the above sale, assignment and transfer of real and personal property unto the said Second Party, and his assigns, forever, against the lawful claims and demands of all and every person and persons whomsoever.

IN WITNESS WHEREOF, the First Party has signed this instrument by its President, thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

Doe Steel & Wire Company,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

No. 85.

Agreement to sell insurance business, with covenants by seller not to solicit, or accept, business of customers.²¹

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Seller"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Buyer"), WITNESSETH:

WHEREAS, the Seller is engaged in business as a soliciting insurance agent and broker in the City of New York, and vicinity; and

WHEREAS, the Seller has agreed to sell to the Buyer all his right, title and interest in his said business, and of the good-will therein, and of any commissions due, or which may become due, therefrom:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. The Seller hereby sells to the Buyer all his right, title and interest in:

(a) His aforesaid business of soliciting insurance as an agent and broker;

(b) The good-will thereof;

(c) Any and all commissions due, or which may become due, on any policies, or renewals, or as the result of the continuation of the business of any customer, or customers; and

(d) In any and all such business transacted by him, which appears on his books of account.

2. The Buyer shall pay to the Seller therefor the sum of fifteen hundred (\$1500) dollars, upon the execution of this agreement.

3. The Seller shall not:

(1) At any time, canvass, solicit, or accept, any business from any customer, or customers, named in his books or records, or who have been thereon;

(2) Permit, or allow, or give, any other person, firm or corporation, the right, or permission, to canvass, solicit, or accept business from any of said customers;

(3) Directly or indirectly, in any way, request, or advise, any customer, or customers, now on his books, or records, or who have

²¹ Adapted from *Moffat v. Archibald M. Ainslie Co.* (1917), 181 App. Div. 37 168 N. Y. Supp. 317.

been thereon, to withdraw, or cancel, his, or any of their, business with the Buyer.

4. If, at any time, the Seller shall attempt to do any of the things, or acts, forbidden in paragraph "3" hereof, he shall pay to the Buyer the sum of fifteen hundred (\$1,500) dollars, as liquidated damages therefor.

5. This sale shall take effect immediately, upon the signing of this instrument; and the Seller hereby authorizes the Buyer, in the Seller's name, but at the Buyer's own cost and expense, to collect the outstanding accounts of such business, to give receipts therefor, and to receive, indorse and collect any and all checks made to the order of the Seller, and delivered or sent in payment of any of said accounts.

6. The Seller shall warrant and defend the said sale against every person, or persons, whomsoever.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

No. 86.

Agreement for consolidation of two business corporations, under laws of New York.²²

THIS AGREEMENT, made January 5, 1923, between Doe & Company, Inc., a corporation, having an office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called "the First Party"), and Richard Roe, Inc., a corporation, having an office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called "the Second Party"), WITNESSETH:

WHEREAS, the First Party is a corporation, duly organized under the Business Corporations Law of the State of New York, for the purpose of carrying on the business of (a) manufacturing, buying, selling and dealing, at wholesale and retail, in all kinds of goods, wares and merchandise, live-stock, and other personal property of every nature and description; (b) establishing and maintaining a department store, or stores, and businesses incidental thereto; (c)

²² Cf. *New York Consol. Laws* (1909), Ch. 4, Sec. 7.

purchasing, selling, leasing, improving and managing real estate, and the construction and acquisition of buildings thereon, as the same may be useful in connection with the general transaction of business of the First Party, or for any other purpose; all of which more fully appears by the certificate of incorporation of the First Party, filed in the office of the Secretary of State of the State of New York, on or about January 5, 1912, and filed in the office of the clerk of the county of New York on or about January 6, 1912; and

WHEREAS, the First Party has an authorized capital stock of one million (\$1,000,000) dollars, divided into ten thousand (10,000) shares of the par value of one hundred (\$100) dollars each, all of which are now issued and outstanding; and

WHEREAS, the Second Party is a corporation, duly organized under the Business Corporations Law of the State of New York, for the purpose of carrying on the business of (a) manufacturing, buying, selling and dealing, at wholesale and retail, in all kinds of goods, wares, merchandise, live-stock and other personal property of every nature and description; (b) establishing and maintaining a department store or stores and businesses incidental thereto; (c) purchasing, selling, leasing, improving and managing real estate, and the construction and acquisition of buildings thereon, as the same may be useful in connection with the general transaction of business of the Second Party, or for any other purpose; all of which more fully appears by the certificate of incorporation of the Second Party, filed in the office of the Secretary of State of the State of New York, on or about April 5, 1911, and filed in the office of the clerk of the county of New York on or about April 7, 1911; and

WHEREAS, the Second Party has an authorized capital stock of one and a half million (\$1,500,000) dollars, consisting of ten thousand (10,000) shares of preferred stock, and five thousand (5,000) shares of common stock, all of the par value of one hundred (\$100) dollars each, all of which are now issued and outstanding:

NOW, THEREFORE, PURSUANT TO THE PROVISIONS OF THE LAWS OF THE STATE OF NEW YORK, IN SUCH CASE MADE AND PROVIDED, THE FIRST PARTY AND THE SECOND PARTY, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREINAFTER CONTAINED, DO HEREBY AGREE TO CONSOLIDATE, AND DO HEREBY CONSOLIDATE, INTO A SINGLE CORPORATION, and do hereby agree

upon and prescribe the terms and conditions of such consolidation, and the mode of carrying the same into effect, which said terms, conditions and mode of carrying the same into effect are as follows:

1. The name of the corporation hereby formed by such consolidation shall be Doe-Roe Company, Inc.

2. The number of directors who shall manage its affairs shall be nine (9).

3. The names and post-office addresses of the directors of such corporation for the first year are, as follows:

NAMES	POST-OFFICE ADDRESSES
John Doe	11½ East 59th Street, New York City.
Henry Doe	11½ East 59th Street, New York City.
Jane Doe	11½ Broadway, Yonkers, New York.
Henry Koe	37½ Broadway, Yonkers, New York.
Richard Roe	16½ East 40th Street, New York City.
John Jones	57½ Broadway, New York City.
John Smith	57½ Broadway, New York City.
Thomas Brown	80½ East 90th Street, New York City.
John Richards	1647½ Broadway, New York City.

4. The term of existence of the new corporation shall be fifty (50) years.

5. The operations of the new corporation shall be carried on in all of the counties of the State of New York, and in all of the cities, towns and villages in the State of New York.

6. Its principal place of business shall be situated in the County of New York, Borough of Manhattan, City and State of New York.

7. The amount of the capital stock of the new corporation hereby formed, which is not, and is hereby declared not to be, larger in amount than the fair aggregate value of the property, franchises and rights of the said corporations so consolidated, shall be six million (\$6,000,000) dollars.

8. That such capital stock shall be divided into sixty thousand (60,000) shares, each of the par value of one hundred (\$100) dollars.

9. That shares of capital stock of the new corporation hereby formed shall be distributed, as follows:

(a) Each stockholder of the First Party shall surrender and return his certificates of stock of said corporation to the new corporation hereby formed, and, upon the presentation and surrender of such certificates of stock, and not otherwise, each stockholder shall be entitled to receive four (4) shares of the capital stock of

the new corporation hereby formed for each share of capital stock of the First Party so presented and surrendered.

(b) Each stockholder of the Second Party shall surrender and return his certificates of stock of said corporation to the new corporation hereby formed, and, upon the presentation and surrender of such certificates of stock, and not otherwise, each stockholder shall be entitled to receive six-tenths (6/10) of one share of the capital stock of the new corporation hereby formed, for each share of the preferred stock of the Second Party so presented and surrendered, and three and one-half (3½) shares of the capital stock of the new corporation hereby formed, for each share of common stock of the Second Party so presented and surrendered.

10. Both of the parties hereto were organized for the purpose of carrying on any part of their respective businesses in any place without the State of New York; and it is the purpose of the new corporation hereby formed, if it shall be deemed advisable, to carry on any part of its business outside of the State of New York.

11. The purposes for which the said new corporation is formed, as herein provided, shall be the same as are set forth in each, and both, of the above mentioned certificates of incorporation of the First Party and of the Second Party, it being the intention of the new corporation to carry on, as a single corporation, the businesses heretofore conducted by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names, by their respective officers, and by a majority of their respective boards of directors, thereunto duly authorized, and their respective corporate seals to be affixed, attested by their respective secretaries, the day and year first above written.

(Seal)		Doe & Company, Inc.,
Attest:		By John Doe,
	John Jones,	President.
	Secretary.	

(Seal)		Richard Roe, Inc.,
Attest:		By Richard Roe,
		President.

Henry Koe,		
Secretary.		
John Jones (L.S.),		Henry Koe (L.S.),
John Smith (L.S.),		Jane Roe (L.S.),
Directors of Doe & Company, Inc.		Directors of Richard Roe, Inc.

No. 87.**Bill of sale of match business, trade-marks, etc., with covenant by seller not to engage in same business.²³**

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Seller"), in consideration of one (\$1) dollar paid by Richard Roe, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Buyer"), hereby sell to the Buyer:

(a) All and singular the goods and chattels, property and effects, mentioned in the schedule hereto annexed and marked with the letter "A";

(b) The whole of the good-will of the match business, heretofore carried on by me, the said Seller, at No. 57½ Broadway, Borough of Manhattan, New York City.

(c) The sole right to the use of the name, trade-marks and labels adopted and used by me, the said Seller, in manufacturing and exposing and offering for sale, and in selling, matches;

(d) My interest and rights in and to the use of the label known as the "Doe label"; and

(e) My right to manufacture the "Doe match."

And I, the said Seller, hereby covenant that I shall not, and will not, at any time, or times, within ninety-nine years from the date hereof, directly or indirectly, engage in the manufacture, or sale, of friction matches (excepting in the capacity of agent or employee of the Buyer), within the United States, or the territories thereof, or within the District of Columbia; and, for the true and faithful performance of said covenant, I, the said Seller, hereby bind myself, my heirs, executors and administrators, unto the said Buyer, in the sum of fifteen thousand (\$15,000) dollars, to be recovered and paid as and for liquidated damages.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923:

In the presence of

John Doe (L.S.).

John Jones.

[Annex Schedule of Property Sold.]

²³ Adapted from *Diamond Match Co. v. Roeber* (1887), 106 N. Y. 473, 13 N. E. 419.

SECTION 6.—AGREEMENTS RELATING TO THE PURCHASE OF STOCK.**(A).—Agreements Made Before Incorporation.****No. 88.**

Conditional agreement made prior to incorporation to subscribe to stock of new corporation to be formed under a plan adopted and deposited with trust company, which is appointed agent of syndicate managers to receive moneys, etc.²⁴

We, the undersigned, each for himself, and not for the others, for value received, each subscriber entering into this contract of subscription, in consideration, among other things, of the subscription of the other parties hereto, hereby severally agree, pursuant to the plan for the organization and financing of the Doe Company, signed by John Doe and others, and deposited with the Roe Trust & Savings Bank of New York City (which plan is hereinafter referred to as the "Plan"), to pay, respectively, to the Roe Trust & Savings Bank of New York City (hereinafter referred to as the "Depository"), as agent for the persons signing said Plan (which persons are hereinafter referred to as the "Syndicate Managers") the sum of money set opposite our respective names signed hereto, upon demand, in installments as hereinafter stated, and, in consideration thereof, each of the undersigned shall receive from said Syndicate Managers, upon payment of the last installment, for each one thousand (\$1,000) dollars paid hereunder, one thousand (\$1,000) dollars par value of the preferred stock and three hundred (\$300) dollars par value of the common stock of the corporation to be organized pursuant to said Plan; provided, however, that this subscription is made subject to the following conditions:

1. That this subscription shall become absolute only:

(a) When the said corporation shall have been fully organized, pursuant to said Plan, and the contract, which is mentioned in said Plan, shall have been entered into by the said corporation and the parties to said Plan, in accordance with the terms of said Plan; and

(b) When subscriptions shall have been entered into of the tenor and effect of this subscription for the payment to said Depository

²⁴ Adapted from *Corn Products Refining Co. v. U. S.* (1919), 249 U. S. 621, 39 Sup. Ct. Rep. 291, 63 Law ed. 805.

of the total aggregate amount of one million, five hundred thousand (\$1,500,000) dollars, and involving the delivery to the subscribers in all of one million, five hundred thousand (\$1,500,000) dollars par value of preferred stock and four hundred and fifty thousand (\$450,000) dollars par value of common stock of said corporation.

2. That this subscription is made upon the following terms and agreements, to wit:

(a) That twenty-five (25%) per cent of each subscription hereunder shall be payable upon demand of the said Syndicate Managers, which demand, however, shall not be made, until the expiration of ten (10) days after this subscription shall have become absolute, as hereinbefore provided.

(b) That the balance due on each subscription shall be paid in three equal installments, upon demand of the said Syndicate Managers; but that no demand shall be made for any installment, until the expiration of at least sixty (60) days after the demand for the payment of the preceding instalment.

(c) That, in the event that any subscriber shall fail to make payment promptly, upon demand, in accordance with the terms hereof, the Syndicate Managers, at their option, may proceed to collect installments on each subscription as they shall fall due, or may declare this contract terminated as to such defaulting subscriber, whereupon the Depositary shall pay to the Syndicate Managers, or to any one of them, the amount of all installments theretofore paid by such defaulting subscriber as agreed and liquidated damages for such failure.

(d) That the Depositary, to the extent that it shall receive the subscriptions hereby made, shall (except as above provided) pay the full amount so collected to the corporation to be organized, pursuant to said Plan, upon the order of the said Syndicate Managers, or any one of them.

(e) That the preferred and common stock to be delivered to the subscribers hereunder shall be of the character specified, and shall contain the provisions set forth, in said Plan.

(f) That the Syndicate Managers, upon the completion of said subscription in full, as herein provided, shall notify each subscriber of such fact, at his last known post-office address; and the completion of each subscription and the mailing of such notice to such address shall make this obligation obligatory upon all the parties to this subscription.

3. It is understood and agreed that:

(a) The said Roe Trust & Savings Bank of New York City, in acting as Depositary under this agreement, and in performing any act, directly or indirectly, called for by this agreement, is acting merely as the agent of the Syndicate Managers, and that it shall be responsible only for its own actual default, or gross negligence; and

(b) The said Roe Trust & Savings Bank of New York City shall not be responsible for any act, or omission, or breach of contract of the Syndicate's Managers, or of the subscribers to this agreement; and

(c) The said Roe Trust & Savings Bank of New York City shall be protected in receiving, delivering and acting upon any notice, request, consent, certificate, bond, or other instrument believed by it to be genuine and to have been properly executed, and may accept, as sufficient proof of any fact, the signed statement of any one of the Syndicate Managers, but that it may, in its discretion, require further proof of such fact; and

(d) The said Roe Trust & Savings Bank of New York City shall be entitled to reasonable compensation for its services hereunder, and, to secure the same, it shall have a lien upon all funds in its hands.

4. It is further agreed that copies of this agreement may be signed, and, when so signed, all of such copies shall be considered as originals, and the signatures thereto shall be considered as though appended to one copy thereof, which shall, for the sake of convenience, bear date as of January 5, 1923.

Subject to, and accepting, the above conditions, I hereby subscribe for ten (10) shares of the preferred stock of the Doe Company, for which I agree to pay one thousand (\$1,000) dollars, in accordance with the terms specified above, and, as a bonus to the above subscription, I am to receive three (3) shares of common stock of said corporation of the par value of three hundred (\$300) dollars.

WITNESS.	SUBSCRIBER.	AMOUNT.	ADDRESS.
John Jones	John Doe	\$1,000	371½ Broadway, Borough of Manhattan, New York City.
Henry Koe	Richard Roe	\$1,000	11½ Broadway, Borough of Manhattan, New York City.

No. 89.

Agreement between promoters and stockholders of various corporations, whereunder the latter agree to deposit their stock and receive in exchange the stock of a new corporation to be organized by the former.²⁵

THIS AGREEMENT, made as of January 5, 1923, by John Doe and Richard Roe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Organizers"), and such of the holders of the stock described in paragraph "1" hereof as may become parties hereto (herein called the "Subscribers"), WITNESSETH:

WHEREAS, the Organizers propose to create, under the laws of the State of New Jersey, or of some other state which may be approved of by their counsel, a corporation which shall be known as the "Distillate Company of America," or by some other name satisfactory to the Organizers (herein called the "Corporation"): and

WHEREAS, the Organizers propose that such Corporation shall have an authorized capital stock of one hundred and twenty-five million (\$125,000,000) dollars, consisting of fifty-five million (\$55,000,000) dollars of preferred stock, which shall be evidenced by five hundred and fifty thousand (550,000) shares of 7% cumulative preferred stock, and seventy million (\$70,000,000) dollars of common stock, which shall be evidenced by seven hundred thousand (700,000) shares of common stock; and

WHEREAS, the object of the Corporation shall be, among other things, to manufacture, sell, distribute, and warehouse whiskey, spirits and alcohol; and

WHEREAS, it is proposed that the certificate of incorporation of the Corporation shall contain such other provisions as the Organizers may approve of; and

WHEREAS, the following corporations are now in existence:

(a) The Jones Spirits & Manufacturing Co. (herein called the "Manufacturing Company"), which is organized under the laws of the State of Delaware, and has an issued capital stock, consisting of one million (\$1,000,000) dollars of common stock, seven million (\$7,000,000) dollars of five (5%) per cent non-cumulative preferred stock;

(b) The Kentucky Distributing Co. (herein called the "Ken-

²⁵ Adapted from *Blum v. Whitney* (1906), 185 N. Y. 232, 77 N. E. 1159.

tucky Company”), which is organized under the laws of the State of New Jersey, and has an issued capital stock, consisting of ten million, five hundred thousand (\$10,500,000) dollars of seven (7%) per cent cumulative preferred stock, and eighteen million, five hundred thousand (\$18,500,000) dollars of common stock; and

(c) The Distributing Company (herein called the “Distributing Company”), which is organized under the laws of the State of New Jersey, and has an issued capital stock, consisting of one million, two hundred and fifty thousand (\$1,250,000) dollars of six (6%) per cent cumulative preferred stock, and one million five hundred and seventy-five thousand (\$1,575,000) dollars of two (2%) per cent non-cumulative preferred stock, and three million, six hundred and seventy-five thousand (\$3,675,000) dollars of common stock (all of said common stock being now owned by the Standard Distilling Company hereinafter referred to); and

(d) Standard Distilling Company (herein called the “Standard Company”), which is organized under the laws of the State of New Jersey, and has an issued capital stock, consisting of eight million (\$8,000,000) dollars of seven (7%) per cent cumulative preferred stock, and sixteen million (\$16,000,000) dollars of common stock; and

WHEREAS, the Organizers propose that the Corporation shall acquire, and become the owner of, at least a majority of the entire capital stock of the Manufacturing Company, of the Kentucky Company, and of the Standard Company, and each of them, and shall, also, acquire, and become the owner of, at least a majority of the entire issued preferred stock of the Distributing Company; and

WHEREAS, the Organizers contemplate that the Corporation shall acquire, and become the owner of, either the rye properties hereinafter referred to, or of the entire capital stock (less such nominal number of shares as shall be necessary to qualify directors thereof) of a certain other company, which may be organized (which company is herein called the “Rye Company”), and which Rye Company, if organized, shall acquire by purchase, or otherwise become the owner of, the following rye distilling properties:

(a) Ninety-five (95%) per cent of the entire capital stock of the Distilling Company of Baltimore; and

(b) The entire capital stock of the St. Paul Distillery Company; and

WHEREAS, the Organizers further contemplate that the Corporation shall be furnished with a cash working capital of at least one million, five hundred thousand (\$1,500,000) dollars; and

WHEREAS, the Organizers contemplate that the Corporation shall retain in its treasury enough of its preferred and common stock to enable it to acquire, if, in its discretion, it should so desire (but without any obligation so to do), by exchange, or purchase, or otherwise, all of the remaining stock of the Manufacturing Company, of the Kentucky Company, of the Standard Company, and of the preferred stock of the Distributing Company, upon the same, or a similar, basis to that herein provided for the acquisition of said majority stock of the Manufacturing Company, of the Kentucky Company, of the Standard Company, and of the aforesaid majority of the preferred stock of the Distributing Company; and

WHEREAS, the Organizers further contemplate that, in addition to so much of its preferred and common stock that is to remain in the treasury of the Corporation for the acquisition by the Corporation of the remaining stock of the Manufacturing Company, of the Kentucky Company, of the Standard Company, and of the preferred stock of the Distributing Company, as hereinbefore recited, the Corporation shall, also, retain in its treasury, for future purposes, twenty-three million, seven hundred and fifty thousand (\$23,750,000) dollars of its preferred stock, and twenty-three million, seven hundred and fifty thousand (\$23,750,000) of its common stock; and

WHEREAS, it is further contemplated that the Organizers shall, as a purchase price, receive from, and be paid by, the Corporation thirty-one million, two hundred and fifty thousand (\$31,250,000) dollars of its preferred stock, and forty-six million, two hundred and fifty thousand (\$46,250,000) dollars of its common stock for all of the said issued capital stock of the Manufacturing Company, for all of the said issued capital stock of the Kentucky Company, and for all of the said issued stock of the Standard Company, and for all of the said issued preferred stock of the Distributing Company, and for said one million, five hundred thousand (\$1,500,000) dollars cash working capital, and for said rye properties or all of the entire capital stock of the said Rye Company, less the directors' qualifying shares as aforesaid, and that for every said share of the said preferred stock of the Manufacturing Company, the Kentucky Company, the Standard Company, and the Distributing Company,

not turned over and transferred by the Organizers to the Corporation, there shall be deducted and retained by the Corporation from said purchase price an appropriate amount of the preferred and common stock of the Corporation, calculated upon the basis hereinafter specified; and

WHEREAS, for the purpose of carrying out this agreement, the Central Trust Company of New York (herein called the "Trust Company") is hereby designated and made the depository hereunder; and

WHEREAS, the Subscribers are, respectively, the holders and owners of the certain number of shares of preferred and common stock of said Manufacturing Company, the Kentucky Company, of the Standard Company, and of the preferred stock of the Distributing Company, which is set opposite their respective names; and

WHEREAS, the Subscribers are willing and desire to sell, assign and transfer their said respective shares to the Organizers, for and in consideration and upon the basis of exchange hereinafter specified:

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES, AND IN FURTHER CONSIDERATION OF THE SUM OF ONE DOLLAR TO EACH OF THE SUBSCRIBERS BY THE ORGANIZERS IN HAND PAID, THE RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED BY EACH OF THE SUBSCRIBERS, THE SUBSCRIBERS DO HEREBY SEVERALLY, BUT NOT JOINTLY, AGREE TO AND WITH THE ORGANIZERS, AS FOLLOWS:

I. The Subscribers do hereby severally agree to sell to the Organizers and to deposit with the Trust Company, properly endorsed in blank, and bearing the proper transfer stamp, certificates representing certain of the preferred and common shares of the Manufacturing Company, of the Kentucky Company, of the Standard Company, and of the preferred shares of the Distributing Company, the amount of which is designated opposite their respective names. The Trust Company shall issue appropriate temporary negotiable receipts evidencing such deposits.

II. For each of said preferred shares and of said common shares so deposited hereunder, the Subscribers, respectively, shall be entitled to receive from the Trust Company, when this agreement shall have become operative, and when and as the new securities shall have been received by the said Trust Company, the following:

(a) For every said preferred share of the Manufacturing Com-

pany, fifty (50%) per cent thereof in preferred stock of the Corporation.

(b) For every said common share of the Manufacturing Company, twenty-five (25%) per cent thereof in common stock of the Corporation.

(c) For every said preferred share of the Kentucky Company, eighty-five (85%) per cent thereof in the preferred stock, and fifteen (15%) per cent thereof in the common stock, of the Corporation.

(d) For every said common share of the Kentucky Company, seventy (70%) per cent thereof in common stock of the Corporation.

(e) For every said preferred share of the Standard Company, eighty-five (85%) per cent thereof in preferred stock, and fifteen (15%) per cent thereof in common stock of the Corporation.

(f) For every said common share of the Standard Company, sixty (60%) per cent thereof in common stock of the Corporation.

(g) For every said share of first-preferred stock of the Distributing Company, eighty (80%) per cent thereof in preferred stock and twenty (20%) per cent thereof in common stock of the Corporation.

(h) For every said share of second-preferred stock of the Distributing Company, twenty-five (25%) per cent thereof in preferred stock and twenty (20%) per cent thereof in common stock of the Corporation.

III. (a) This agreement shall not become binding, operative and effective, unless there shall have been deposited hereunder with the Trust Company, or under similar agreements, certificates representing a majority of the entire issue of the capital stock of the Manufacturing Company, of the Kentucky Company, of the Standard Company, and of each of them, and of the preferred stock of the Distributing Company. The Trust Company may, in its discretion, in lieu of the actual deposit with it of certificates for shares, accept an agreement in writing to make such deposit, upon five days' notice from the Trust Company so to do; and the deposit, when made, shall be deemed to have been made within the time limited or extended as herein provided. In computing a majority of stock to render this agreement operative, there shall be included any and all shares as to which obligations to deposit the same shall be accepted by the Trust Company.

(b) The deposit of shares hereunder with the Trust Company shall have the same force and effect as though the one making such deposit signed this instrument.

IV. When this agreement has become binding, operative and effective, the Trust Company shall deliver to the Jones Trust Company all of the stock deposited hereunder, upon the Trust Company receiving from the Jones Trust Company shares of stock of the Corporation adequate and sufficient to pay the said purchase price so deposited hereunder.

V. June 30, 1923, is hereby designated as the date of the expiration of the time for the deposit of the shares hereunder, but such time may be extended, for not exceeding thirty days thereafter, by agreement between the Organizers, the Trust Company and the Jones Trust Company; and, in case the Jones Trust Company shall not within thirty days after said June 30, 1923, or after the expiration of any extended time, notify the Trust Company that the Organizers are ready to complete the purchase of the shares so deposited hereunder, the shares deposited hereunder shall be returned by the Trust Company, without charge to the depositor of the same respectively, or to the holder of said receipts, upon the surrender to the Trust Company of said receipts duly endorsed.

VI. For the purpose of convenience, copies of this instrument may be signed, and, when so signed, all of such copies shall be considered as originals, and the signatures thereto shall be considered the same as though appended to one copy thereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

Henry Koe.

SUBSCRIBERS.

Name	Number	Number	Corporation.
	of Shares of Common Stock	of Shares of Preferred Stock	
John Jones	100	50	The Jones Spirits & Manu- facturing Co.
John Brown	200	100	The Kentucky Distributing Co.

No. 90.

Agreement of underwriting, whereunder subscribers agree to purchase stock in a corporation to be formed.²⁶

THIS AGREEMENT, made as of January 5, 1923, by the Doe Trust Co., a corporation, duly organized under the laws of the State of New Jersey, and having its principal place of business at No. 11½ Broad Street, Newark, New Jersey (herein called the "Bank"), and such other parties as may execute this agreement (herein called the "Undersigned"), WITNESSETH:

WHEREAS, certain parties, who are herein called "Promoters," propose to organize, under the laws of the State of New Jersey, a corporation to be known as Roe Candy Co. (or by some other name, which shall be satisfactory to the Promoters), herein called the "Corporation," the objects of which Corporation shall be, among other things, to manufacture and sell glucose, grape sugar, starch and by-products thereof, and similar articles of merchandise; and

WHEREAS, the Promoters propose that such Corporation shall have a capital stock of forty million (\$40,000,000) dollars, which shall be represented by four hundred thousand (400,000) fully-paid and non-assessable shares of the par value of one hundred (\$100) dollars each, and that such shares shall be divided into two hundred and sixty thousand (260,000) shares of common stock, and one hundred and forty thousand (140,000) shares of seven (7%) per cent cumulative preferred stock; and

WHEREAS, the Promoters propose that, by proper instruments of transfer and conveyance, there shall be sold, transferred, and assigned to the Corporation the real estate, buildings, improvements, appurtenances, easements, plants, machinery, fixtures, utensils, good-will, trade-marks, trade-rights, trade-names and patents now owned and used by the Roe Candy Co. of Illinois, and the Roe Candy Co. of New York; and

WHEREAS, the Promoters further propose that there shall be furnished to the Corporation, at the time of such sale and transfer to it, two million (\$2,000,000) dollars of working capital, in order to enable the Corporation to operate its business; for all of which the Promoters shall receive from, and be paid by, the Corporation

²⁶ Adapted from *Corn Products Refining Co. v. U. S.* (1919), 249 U. S. 621. 39 Sup. Ct. Rep. 291, 63 Law ed. 805.

the sum of thirty-nine million, three hundred thousand (\$39,300,000) dollars in cash, or, wholly in lieu thereof, thirteen million, three hundred thousand (\$13,300,000) dollars of said preferred stock, at par value, and twenty-five million (\$25,000,000) dollars of said common stock, at par value, or, in lieu of any part of said cash amount, a proportionate amount of said preferred and common stock; and

WHEREAS, the Promoters are, and shall be, represented, in the carrying out and enforcement of this contract, by the Bank; and

WHEREAS, the Bank shall be, and is hereby, given the right to enforce compliance with this agreement by the parties hereto; and

WHEREAS, it is deemed desirable before, and as an aid to, the organization of the Corporation that said preferred stock shall be underwritten and guaranteed, upon the terms and conditions herein contained; and

WHEREAS, the Undersigned desire, upon the terms and conditions herein contained, each for himself, severally, and not jointly, to underwrite and guarantee the purchase of said preferred stock:

NOW, THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE UNDERSIGNED SEVERALLY, OF THE ONE PART, AND THE BANK, OF THE OTHER PART, AS FOLLOWS:

1. The Undersigned, each for himself, severally and not jointly, and not for the others, do hereby agree to, and do, subscribe for, and agree to purchase, so much of the said preferred stock, at the par value thereof, as is set opposite their respective names, for cash, within ten days, as and when payment thereof shall be called for by the Bank; it being agreed that time shall begin to run from the date that the call for such payment shall be mailed by the Bank. For all payments which shall be made to the Bank hereunder, the Bank shall issue and deliver its negotiable receipts; and such receipts shall be exchanged by the Bank for the stock of said corporation when issued, in accordance with this agreement.

2. With each share of said preferred stock so subscribed for and agreed to be purchased and paid for by the Undersigned respectively, the Undersigned respectively shall receive one full-paid share of said common stock.

3. Any person now interested as a stockholder in either of the corporations, the purchase of whose plants is, as aforesaid, contemplated by the Corporation, shall be, and is hereby, given the

right and privilege of becoming a party to this agreement and to subscribe for, and agree to purchase, said preferred stock, at the par value thereof, so many shares as he may set opposite his name, upon the terms and conditions herein contemplated; provided, however, that such person may apply, in payment of the stock so subscribed for by him, so much of the purchase price to be paid to his respective corporation for the sale by such corporation of the property mentioned in the preamble hereof as may be authorized by such corporation. Such authorization and application of such payment in the manner aforesaid shall be equivalent to a cash payment, as specified in paragraph "1" hereof.

4. In consideration of the fact that this agreement underwrites and guarantees the purchase of the said fourteen million (\$14,000,000) dollars of preferred stock at the par value thereof, according to the terms and provisions hereof, the Undersigned shall receive, in addition to the share of common stock which is to be given with each share of preferred stock, as specified in paragraph "2" hereof, their respective *pro rata* share of sixty thousand (60,000) shares of said common stock.

5. Notwithstanding said preferred stock is limited to a total of fourteen million (\$14,000,000) dollars, the same may be underwritten, and the purchase thereof guaranteed, to an extent in excess of fourteen million (\$14,000,000) dollars; and, in the event of such excess, all the amounts subscribed and hereby guaranteed by the Undersigned, and the benefits accruing hereunder, shall be apportionately abated and reduced. In no event, however, shall the total preferred stock of the corporation exceed fourteen million (\$14,000,000) dollars. The Promoters are hereby vested with the exclusive power of determining to what extent such excess of underwriting and guaranteeing of said preferred stock shall be permitted.

6. This agreement shall not become obligatory upon any of the parties hereto, until said entire preferred stock of fourteen million (\$14,000,000) dollars shall have been underwritten and subscribed for, according to the terms and provisions hereof; and, upon the happening of such event, this agreement shall be and become binding, operative and effective; and notice of the fact that this agreement has become so binding, operative and effective shall be mailed by the Bank to the Undersigned.

7. The right and power to enforce this agreement, when the same shall have become binding, operative and effective, is hereby vested exclusively in the Bank, which alone shall have the right to enforce the payment of the obligations assumed hereunder by the Undersigned.

8. If any of the Undersigned shall fail to complete his or their respective payments, when called upon by the Bank, as herein provided, it shall be optional with the Bank to proceed to collect the amount remaining due, or to forfeit all payments heretofore made hereunder by the party, or parties, in default, as fixed, specified and liquidated damages, and to deprive the parties so in default of the right of any participation whatsoever in this agreement, or in the benefits to be derived therefrom.

9. It is hereby expressly understood and agreed that the Promoters shall have, and are hereby given, the exclusive right, at their option, at any time before any call shall have been made hereunder, to substitute for the Bank a trust company of the City of New York, satisfactory to such Promoters; and, in the event of such substitution, notice thereof shall be given to the Undersigned, and such substitution shall have the same force and effect as though such trust company had been originally mentioned and designated in this agreement, in lieu and place of the Bank herein specified; and, in that event, all of the obligations of the Undersigned, created by this agreement, shall inure, run to and be in favor of the trust company so substituted.

10. If, for any reason, whether before or after this agreement shall have become binding, operative and effective, the Promoters shall determine to abandon said project and the organization of the Corporation, and shall so declare to the Bank, then this agreement, in all its parts, including the obligation to deliver said preferred stock, or any of said common stock, shall be and become forthwith null and void.

11. For convenience, this agreement shall be deemed to have been made as of January 5, 1923. Separate copies of this agreement may be executed, with the same force and effect as if all the signatures to said separate copies were appended to one original agreement.

IN WITNESS WHEREOF, The Doe Trust Co. has hereunto set its hand, by its President thereunto duly authorized, and has caused

its corporate seal to be affixed, attested by its Secretary, and the Undersigned have hereunto set their hands and seals, as of the day and year first above written.

Doe Trust Co.,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

NAME.	ADDRESS.	AMOUNT OF PRE-
		FERRED SHARES SUB- SCRIBED FOR.
John Brown,	11½ Broadway, New York City,	100
Thomas Jones,	37½ Broadway, New York City,	500

(B).—Agreements Made After Incorporation.

No. 91.

Agreement to purchase stock from broker on installment plan.²⁷

Peekskill, N. Y., January 5, 1923.

John Doe & Co.,
No. 11½ Broadway,
New York City.

Gentlemen:

I hereby agree to purchase fifty (50) shares of the seven per cent (7%) preferred stock of the Roe Products Co. (par value one hundred [\$100] dollars each), and agree to pay you therefor the sum of one hundred (\$100) dollars per share, as follows:

Twenty-five hundred (\$2,500) dollars herewith; and

Five hundred (\$500) dollars on the fifth day of each month hereafter, until the entire amount shall have been paid to you.

I agree, as follows:

(a) That punctuality in making the said payments shall be of the essence of this contract; and

²⁷ Cf. *Galbraith v. McDonald* (1913), 123 Minn. 208, 143 N. W. 353, L. R. A. 1915 A, 464, Ann. Cas. 1915 A, 420.

(b) That such shares shall be issued, delivered and belong to me, only after the final payment hereunder shall have been made; and

(c) That the only agreements, inducements, representations and statements upon which I make this agreement are embodied herein; and

(d) That this contract shall be subject to your acceptance.

Name: Henry Koe,
Address: No. 111½ Main Street,
Town: Peekskill,
State: New York.

Salesman:

John Jones.

Accepted:

John Doe & Co.,
By John Doe.

No. 92.

Agreement with corporation to purchase its stock.²⁸

Peekskill, N. Y.,
January 5, 1923.

Doe Products Co., Inc.,
No. 111½ Broadway,
New York City.

Gentlemen:

I hereby subscribe for fifty (50) shares of the seven per cent (7%) preferred stock of the Doe Products Co., Inc. (par value one hundred [\$100] dollars each), at the price of one hundred (\$100) dollars a share, and send you herewith my check for such amount in payment thereof.

Name: Richard Roe,
Address: 111½ Main Street,
Town: Peekskill,
State: New York.

Accepted:

Doe Products Co., Inc.,
By John Doe,
President.

²⁸ Cf. *Instone v. Frankfort Bridge Co.* (1812), 5 Ky. 576.

No. 93.**Agreement with corporation to purchase its stock on installment plan.²⁹**

New York City, January 5, 1923.

Doe Products Co., Inc.,
No. 11½ Broadway,
New York City.

Gentlemen:

I hereby subscribe for fifty (50) shares of your common stock, at one hundred (\$100) dollars per share, and send you herewith my check to your order for twenty-five hundred (\$2,500) dollars on account thereof; and I agree to pay the balance of twenty-five hundred (\$2,500) dollars within thirty (30) days from this date.

I agree:

(a) That the certificates for such shares of stock shall be delivered to me, only when the full purchase price shall have been paid to you;

(b) That I shall not be entitled to receive any dividends, until the full purchase price shall have been paid by me; and

(c) That this subscription is given only upon the representations contained in the printed literature issued by you, and that neither any representation not contained therein, nor any collateral agreement of any nature whatsoever, shall be binding upon you.

Name: Henry Koe,

Street: No. 37½ Broadway,

City: New York City.

Accepted:

Doe Products Co., Inc.,

By Richard Doe,

President.

²⁹ Cf. *Rochester & K. F. Land Co.* (1899), 158 N. Y. 576, 53 N. E. 507, 47 L. R. A. 246.

No. 94.

Same—another form.³⁰

Peekskill, N. Y., January 5, 1923.

Number 501A.

Doe Products Co., Inc.,
No. 11½ Broadway,
New York City.

Gentlemen:

I hereby subscribe for fifty (50) shares of the common stock of Doe Products Co., Inc., of the par value of one hundred (\$100) dollars, and agree to pay you therefor the sum of one hundred (\$100) dollars per share.

I hereby pay, on account thereof, the sum of twenty-five hundred (\$2,500) dollars, by check, to the order of Doe Products Co., Inc., and agree to pay the balance of twenty-five hundred (\$2,500) dollars, in installments of five hundred (\$500) dollars each, on the tenth day of each month hereafter.

It is mutually agreed, as follows:

(a) In the event of my failure punctually to make any of the payments aforesaid, this contract shall, at the option of the Doe Products Co., Inc., cease and determine, by the Doe Products Co., Inc., giving me thirty (30) days' notice in writing of its intention to exercise such option, which notice shall be mailed to me, at my address as stated below; and, in such event, the Doe Products Co., Inc., shall retain all payments made by me hereunder, in full satisfaction and liquidation of the damages sustained by it, as a result of my failure punctually to make any of the aforesaid payments.

(b) That all and the only agreements, covenants, inducements, promises, representations and statements, upon which I enter into this agreement, are embodied herein.

(c) That the Doe Products Co., Inc., shall have the right to reject all, or any portion, of this subscription, if the terms thereof do not meet with its approval.

(d) That the Doe Products Co., Inc., shall assume no responsibility for any payments made by me, if the following rule is not adhered to by me: that I shall demand and receive from the representative of the Doe Products Co., Inc., to whom this agreement

³⁰ Cf. *Lowville & B. R. R. Co. v. Elliott* (1909), 196 N. Y. 545, 89 N. E. 1104.

is delivered, a numbered receipt for the initial payment made by me hereunder, and a special return receipt, bearing the same number as such receipt, which shall be properly filled in and personally mailed by me to the Doe Products Co., Inc., at its address stated above.

Name: Henry Koe,
Address: No. 11½ Main Street,
Town: Peekskill,
State: New York.

Salesman: .
John Jones.

.....
Number 501A. Representative's Receipt.

Peekskill, N. Y., January 5, 1923.

Received from Henry Koe twenty-five hundred (\$2,500) dollars, by check, as a payment on account of his subscription for fifty (50) shares of common stock of the Doe Products Co., Inc., at one hundred (\$100) dollars per share (par value \$100), in accordance with his subscription of even date and number.

John Jones,
Authorized representative of
Doe Products Co., Inc.

.....
Special Return Slip.

Detach and mail immediately to Doe Products Co., Inc., 11½ Broadway, New York City.

No. 501A. Peekskill, N. Y., January 5, 1923.
Doe Products Co., Inc.,
No. 11½ Broadway,
New York City.

Gentlemen:

I have this day paid your Mr. John Jones the sum of twenty-five hundred (\$2,500) dollars, by check, as part payment upon a subscription this day made by me. I have received the official receipt numbered as above, signed by your representative, and approved by me.

Yours very truly,

Name: Henry Koe,
Address: No. 11½ Main Street,
Town: Peekskill,
State: New York.

No. 95.

Agreement for sale, on installment plan, of large block of stock, which is to be deposited in escrow, pending final payment.³¹

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Seller"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Buyer"), WITNESSETH:

WHEREAS, the Koe Mining Co. is a corporation, duly organized under the laws of the State of Arizona, and has an authorized capital stock, consisting of seven hundred thousand (700,000) shares of the par value of one (\$1) dollar each, all fully paid and non-assessable; and

WHEREAS, the Seller is the owner of four hundred thousand (400,000) shares of the capital stock of said Koe Mining Co.:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the Seller agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, four hundred thousand (400,000) shares of the capital stock of the Koe Mining Co., at the price of twenty (20¢) cents a share, to be paid for in cash and delivered, as follows:

(a) Fifty thousand (50,000) shares thereof, on January 6, 1923.

(b) Three hundred and fifty thousand (350,000) shares, on or before January 1, 1924; provided, however, that, prior to such time, the Buyer may pay for, and receive, the whole, or any part, or parts, of such shares, at any time, or times, that the Buyer shall elect.

2. That the Seller shall deposit the said three hundred and fifty thousand shares of stock with the Smith National Bank, at New York City, immediately upon payment being made by the Buyer for said fifty thousand (50,000) shares of stock on January 6, 1923, with instructions to said Smith National Bank to deliver the whole, or any part, or parts, of said three hundred and fifty thousand (350,000) shares of stock to the Buyer, but not later than January 1, 1924, upon payment by the Buyer to said Smith National Bank, for the account of the Seller, of the sum of twenty

³¹ Adapted from *In re Heinze* (1918), 224 N. Y. 1, 120 N. E. 63.

(20¢) cents for each share of said stock, which the said Buyer shall elect to receive.

3. That, if the Buyer shall fail to pay for all of said shares, on or before January 1, 1924, then, and in such event, any shares then remaining on deposit with the said Smith National Bank shall be returned by said Bank to the Seller; but the Buyer shall, nevertheless, continue to remain liable to the Seller for so much of the purchase price thereof as shall then remain unpaid.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of
John Jones.

No. 96.

Agreement with stockholder to purchase his stock, conditioned upon corporation increasing its capital stock, whereunder stock and purchase price are deposited in escrow.³²

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Seller"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Buyer"), WITNESSETH:

WHEREAS, the Doe Company is a corporation, duly organized under the laws of the State of New York, and has an authorized capital stock, consisting of two hundred and fifty (250) shares of common stock, each of the par value of one hundred (\$100) dollars, all full-paid and non-assessable; and

WHEREAS, the Doe Company is about to increase the amount of its capital stock to three hundred and fifty (350) shares of common stock, each of the par value of one hundred (\$100) dollars, all full-paid and non-assessable; and

WHEREAS, the Seller is the owner of two hundred (200) shares of the capital stock of the Doe Company; and

WHEREAS, the Buyer desires to purchase from the Seller one hundred (100) shares of the capital stock of the Doe Company, which now is owned by him, provided the Doe Company shall increase its capital stock as aforementioned:

³² Adapted from *Lovell v. Jacobs* (1896), 150 N. Y. 84, 44 N. E. 792.

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the Seller shall sell, and the Buyer shall purchase from the Seller, one hundred (100) shares of the capital stock of the Doe Company, which now is owned by the Seller, for the sum of ten thousand (\$10,000) dollars.

2. That, simultaneously with the execution of this agreement, the Seller shall deliver to the Koe Trust Company of New York City a certificate for one hundred (100) shares of the capital stock of the Doe Company, endorsed in blank, and the Buyer shall deposit with the Koe Trust Company of New York City the sum of ten thousand (\$10,000) dollars, which certificate and sum shall be held in escrow by the said Koe Trust Company, until the happening of one of the contingencies set forth in article "3" hereof.

3. (a) That time is of the essence of this contract; and if the Doe Company shall, in due form of law, on or before March 5, 1923, cause the amount of its present capital stock to be increased to three hundred and fifty (350) shares of common stock, each of the par value of one hundred (\$100) dollars, all full-paid and non-assessable, the said Koe Trust Company of New York City shall deliver to the Buyer the said certificate of stock, so deposited with it in escrow, and shall pay to the Seller the sum of ten thousand (\$10,000) dollars, so deposited with it in escrow.

(b) But, if the said proposed increase of the capital stock of the Doe Company shall not be effectuated, in due form of law, on or before March 5, 1923, or, if the issuance of any such increase of capital stock shall be enjoined, or prevented, by any proceeding, whether in law or in equity, then, and in such event, this contract shall become null and void, and the aforesaid certificate of stock, so deposited in escrow with the Koe Trust Company, shall be returned to the Seller, and the Koe Trust Company shall pay to the Buyer the said sum of ten thousand (\$10,000) dollars, so deposited in escrow with it; and, thereupon, neither party hereto shall have any claim, or claims, cause, or causes of action, hereunder against the other.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

No. 97.

Agreement by stockholder to sell entire capital stock of corporation, whereunder seller releases corporation of indebtedness in return for assignment of accounts, and covenants to hold it harmless from debts and not to compete with it.³³

THIS AGREEMENT, made January 5, 1923, between John Doe, of Larchmont, New York (herein called the "Seller"), and Richard Roe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Buyer"), and Roe Co., Inc., a corporation, duly organized under the laws of the State of New York, and having an office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Corporation"), WITNESSETH:

WHEREAS, the Corporation is duly organized under the laws of the State of New York, and has an authorized and issued capital stock, consisting of five hundred (500) shares, each of the par value of one hundred (\$100) dollars, all full-paid and non-assessable; and

WHEREAS, the Seller is the owner of the entire capital stock of the Corporation; and

WHEREAS, the Buyer is desirous of purchasing from the Seller the entire capital stock of the Corporation; and

WHEREAS, the Corporation is indebted to the Seller in the sum of ten thousand (\$10,000) dollars;

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the Seller hereby sells to the Buyer, and the Buyer hereby purchases from the Seller, five hundred (500) shares of the capital stock of the Corporation, of the par value of one hundred (\$100) dollars each, together with all dividends, incomes, and issues therefrom, and all rights of pre-emption, for the sum of seventy-five thousand (\$75,000) dollars.

2. (a) That the Seller shall indorse in blank the certificate, or certificates, representing said shares of capital stock, and shall deliver the same to the Buyer, simultaneously with the execution of this agreement, and the Buyer shall, upon receipt thereof, pay

³³ Adapted from *Comerma Co. v. Comerma* (1919), 225 N. Y. 676, 122 N. E. 878.

to the Seller the said sum of seventy-five thousand (\$75,000) dollars, by a certified check, drawn to the order of the Seller.

(b) That, simultaneously with the execution of this agreement, the Seller shall execute and deliver to the Buyer his written resignation as president and director of the Corporation.

3. (a) That the Corporation hereby assigns to the Seller all of its right, title and interest in its outstanding accounts receivable, which are set forth in the schedule hereto annexed, marked "Exhibit A," and hereby made a part hereof; and, in consideration thereof, the Seller hereby releases the Corporation from the payment to the Seller of its indebtedness of ten thousand (\$10,000) dollars.

(b) That the Corporation shall collect the moneys due upon said accounts receivable, as the agent, and at the expense, of the Seller, and shall deliver the proceeds thereof to the Seller, as and when the same shall be received by the Corporation.

4. That the Seller warrants that annexed hereto, marked "Exhibit B," and hereby made a part hereof, is a schedule, containing all of the moneys due, or to become due, from the Corporation, by reason of any matter, cause, thing or transaction whatsoever, initiated, or had, prior to the date hereof; and the Seller shall pay all of such debts, and shall save and hold harmless the Corporation therefrom.

5. That the Seller shall not, for his own account, or for the account of others, or as the employe, agent, or servant of any person, firm or corporation, either directly or indirectly, bid on, engage in, or give assistance in, bidding on, contracting for, or building, walls, ceilings, arches, domes, or other structures, of flat tile, and in particular, of that class of tile work known as "Gustavino Arches," "Spanish Tile Arches," "Cohesive Tile Arches," "Timbrel Vaults," "Timbrel Tile Construction," or "Roe Tile Arches," for a period of thirty (30) years from the date hereof, either in the United States, the Dominion of Canada, Mexico, or Cuba, excepting only in the States of Idaho, New Mexico, Arizona, Nevada, Wyoming, and North Dakota; provided, however, that nothing herein contained shall be construed to limit the Seller's right to use ordinary rough terra cotta, or hollow tile blocks, in building construction, when the same are not used to form, or imitate, the type, or types, of tile construction aforementioned.

6. That the Seller shall not, at any future time, either directly

or indirectly, conduct, or be interested, or associated, in any business conducted under the name of "Roe Co., Inc.," or under any other name so nearly resembling the same as may be calculated to mislead or deceive.

7. That the Seller hereby acknowledges the validity of the following United States Letters Patent: No. 1001A, issued to John Jones, on January 18, 1921, for an improvement in masonry structures, and No. 1002A, issued to John Smith, on January 18, 1921, for an improvement in walls and ceilings of auditoriums and the like; and the Seller hereby agrees not to infringe, or contest, the validity of, said letters patent, or either of them.

8. That this agreement shall bind the parties hereto, and their heirs, executors, successors and assigns, respectively.

IN WITNESS WHEREOF, Roe Co., Inc., has caused this contract to be signed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, and the other parties hereto have hereunto set their hands and seals, the day and year first above written.

Roe Co., Inc.,
By John Doe,
President.

(Seal)

Attest:

John Brown,
Secretary.

John Doe (L.S.).
Richard Roe (L.S.).

[Annex Schedules of Accounts Receivable and of Debts.]

No. 98.

Agreement of corporation to sell its stock to syndicate managers.³⁴

THIS AGREEMENT, made January 5, 1923, between Smith Syndicate, a corporation, duly organized under the laws of the State of New Jersey, and having its principal office at No. 11½ Broad Street, Newark, New Jersey (herein called the "Company"), party of the first part, and John Doe and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City,

³⁴ Adapted from *Wing v. Smith* (1919), 225 N. Y. 657, 121 N. E. 899.

Syndicate Managers for the subscribers under a certain agreement hereinbelow referred to (herein called the "Syndicate Managers"), parties of the second part, WITNESSETH:

WHEREAS, the Company has contracted for the purchase of certain rights and mining properties situated in the District of La Luz, State of Guanajuato, Republic of Mexico, known as the Jason Mines, consisting of eight hundred (800) acres, and the Trow Mines, consisting of ninety (90) acres, and, also, a majority of the capital stock of the La Luz Mines Co., consisting of two hundred and eighty thousand (280,000) shares, out of four hundred thousand (400,000) shares, which Company has control of the following mines:

The Reed Mine and the Green Mine, located in the District of La Luz, as aforesaid, aggregating two hundred and sixty (260) acres; and

WHEREAS, the Company is without sufficient funds to meet the payments which fall due under its contract of purchase, and, for the purpose of procuring funds to make such payments and acquire said rights and properties, has been desirous of selling eight thousand (8,000) shares of its common capital stock, but has been unable heretofore to make such sale to the advantage of the Company; and

WHEREAS, in and by a certain agreement dated January 5, 1923 (a copy of which is hereto annexed), a syndicate has been formed to purchase the said eight thousand shares of stock, and the Syndicate Managers thereunder, parties of the second part hereto, have made an offer, in behalf of the subscribers to said syndicate agreement, to purchase and to pay for said stock the sum of eight hundred thousand (\$800,000) dollars, upon the Company agreeing to pay to the Syndicate Managers, such amounts of interest, or other expenses, as may be incident to carrying out the purposes of the said Syndicate; and

WHEREAS, it is deemed to the advantage of the Company to accept such offer made in behalf of the Syndicate Subscribers;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES, AND OF THE SUM OF ONE (\$1) DOLLAR IN HAND PAID BY THE SYNDICATE MANAGERS TO THE COMPANY, AND OF THE MUTUAL AGREEMENTS HEREINAFTER MENTIONED, THE PARTIES HERETO AGREE, AS FOLLOWS:

FIRST: The Company hereby sells and agrees to deliver to the Syndicate Managers, as such, upon the execution hereof, eight

thousand (8000) shares of the common capital stock of the Company.

SECOND: The price therefor shall be the sum of eight hundred thousand (\$800,000) dollars, to be paid by the Syndicate Managers, as follows:

- (a) On the 5th day of January, 1923, \$125,000
- (b) On the 5th day of February, 1923, 185,000
- (c) On the 5th day of March, 1923, 100,000
- (d) On the 30th day of April, 1923, 90,000
- (e) On the 2nd day of May, 1923, 100,000
- (f) On the 1st day of June, 1923, 100,000
- (g) On the 1st day of July, 1923, 100,000

THIRD: The Company hereby agrees to pay to the Syndicate Managers the expenses, interest charges and other disbursements on account of, or incident to, the handling of the syndicate, the procuring of any loan, or loans, contemplated by said syndicate agreement and the carrying out of the purposes of the syndicate; such payment to be paid, at the time of the termination of said syndicate, written notice of which shall be given by the Syndicate Managers to the Company, or at such time, or times, prior thereto as the parties hereto shall hereafter agree upon.

FOURTH: The Syndicate Managers, as such, agree to accept and pay for the said eight thousand shares of common capital stock of the Company sold hereunder as aforesaid.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, and the Syndicate Managers, as such, have hereunto affixed their hands and seals, the day and year first above written.

Smith Syndicate,
By John Smith,
President.

(Seal)

Attest:

John Jones,
Secretary.

John Doe (L.S.).
Richard Roe (L.S.).
Syndicate Managers.

[Annex Copy of Syndicate Agreement.]

No. 99.

Agreement between two stockholders, whereunder each agrees to purchase shares owned by the other, at the time of his death.³⁵

THIS AGREEMENT, made January 5, 1923, by John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party owns three hundred (300) shares, and the Second Party owns two hundred (200) shares, of the capital stock of the Koe Manufacturing Co., Inc., a corporation, duly organized under the laws of the State of New York; and

WHEREAS, the parties hereto desire that, upon the death of either, the survivor shall purchase such shares of the capital stock of the Koe Manufacturing Co., Inc., as the other may be the owner of, at the time of his decease:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That, upon the death of either party, the survivor shall have the right to purchase, and shall purchase, from the executor, or administrator, of the deceased party, at the price of one hundred and twenty-five (\$125) dollars per share, all of the shares of the capital stock of the said Koe Manufacturing Co., Inc., which such deceased party may be the owner of, at the time of his decease.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

³⁵ Adapted from *In re Cory's Estate* (1917), 221 N. Y. 612, 117 N. E. 1065.

SECTION 7.—MISCELLANY.**No. 100.**

Agreement by president of corporation, upon sale of its assets, not to engage in similar business.³⁶

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Roe Company, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party is the president, a director and the owner and holder of a large amount of the capital stock of the Doe Company, Inc., a corporation, duly organized under the laws of the State of New York; and

WHEREAS, the said Doe Company, Inc., and the Second Party hereto are engaged in the business of manufacturing and selling glucose, grape sugar, starch and kindred products, and the various products of a glucose factory; and

WHEREAS, contemporaneously herewith, the Second Party has purchased all the real estate, leaseholds, buildings, improvements, appurtenances, easements, plant, machinery, fixtures and utensils belonging to the said Doe Company, Inc., and situated in Newark, N. J., together with all and singular the business of the said Doe Company, Inc., at Newark, N. J., and together with the entire good-will thereof, and all and singular the trade-rights, trade-marks, and trade-names, and all and singular the trade-rights, trade-marks, and trade-names, now, or heretofore, owned, controlled, or used, by said Doe Company, Inc., in connection with its said business at Newark, N. J., and, also, the exclusive right to the use of all patents owned, or controlled, by said Doe Company, Inc., so far as the manufacture of glucose and grape sugar is concerned; and

WHEREAS, the First Party has been, for many years, connected with, or engaged in, the management of the business of the said Doe Company, Inc., and has skill, experience and a thorough

³⁶ Adapted from *Corn Products Refining Co. v. U. S.* (1919), 249 U. S. 621, 39 Sup. Ct. Rep. 291, 63 Law ed. 805.

knowledge of said business, and a large and extensive acquaintance with the trade of said Doe Company, Inc., and with the business of manufacturing and selling glucose, grape sugar, starch and kindred products and the various products of a glucose factory; and

WHEREAS, a valuable and substantial part of the consideration paid by the Second Party for the property so as aforesaid described was, and is, the agreement herein contained, and the First Party will derive great profit, benefit and advantage from, and in consequence of said purchase:

NOW, THEREFORE, in consideration of the sum of one (\$1) dollar by each of the parties hereto to the other in hand paid, and other good and valuable considerations, the receipt whereof is hereby acknowledged, the parties hereto hereby mutually agree, as follows:

1. The First Party hereby covenants and agrees with the Second Party, its successors and assigns, that he will not, at any time, during the period of five (5) years, from and after the date hereof, directly or indirectly, under any circumstances, or conditions whatsoever, engage in, or be, or become, interested as an individual, partner, stockholder, director, officer, clerk, principal, agent, employe, trustee, lender of money, or in any relation, or capacity whatsoever, in, or to, the business (other than that of the Second Party) of buying, manufacturing, or selling, glucose, grape sugar, starch, or any kindred products, or any of the products of a glucose factory, within a radius of fifteen hundred (1,500) miles of the city of Newark, New Jersey.

IN WITNESS WHEREOF, the Second Party has hereunto signed its name, by its President thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary, and the First Party has hereunto set his hand and seal, the day and year first above written.

John Doe (L.S.).

Roe Company, Inc.,

By Richard Roe,

President.

(Seal)

Attest:

John Smith,

Secretary.

No. 101.**Clause for arbitration in designated city.³⁷**

Any dispute arising out of this contract shall be settled by arbitration in New York City.

No. 102.**Clause for arbitration by committee of an exchange.³⁸**

Disputes or claims of whatsoever nature, relating to this contract, shall be settled by the arbitration committee of the New York Produce Exchange; and it is expressly agreed by the parties hereto that, upon application in writing by either the Buyer or the Seller for the adjudication of a complaint or claim, the party receiving the written request will attend and proceed with the arbitration, as provided in this paragraph, and both parties agree to be bound by the arbitrator's decision, and that judgment of the Supreme Court may be rendered upon the award made pursuant to the submission.

No. 103.**Clause for arbitration of dispute respecting quality.³⁹**

Any dispute arising as to the quality of delivery, under this contract, shall be arbitrated in the usual manner.

No. 104.**Clause extending time for delivery upon contingencies.⁴⁰**

In the event of war, fire, flood, strike, lockout, accident, or any other cause interfering with the production, or the transportation, of goods herein described, deliveries under this contract may be suspended, during the period required to remove the cause, or repair the damage.

³⁷ Adapted from *C. Itch & Co., Ltd., v. Boyer Oil Co.* (1921), 198 App. Div. 881, 191 N. Y. Supp. 290.

³⁸ Adapted from *In re Lowenthal* (1921), 199 App. Div. 282, 191 N. Y. Supp. 282.

³⁹ Adapted from *In re Palmer & Pierce, Inc.* (1921), 195 App. Div. 523, 186 N. Y. Supp. 369.

⁴⁰ Cf. *Jessup & Moore Paper Co. v. Piper* (1902), 133 Fed. Rep. 108; *Consolidated Coal Co. v. Mexico Fire Brick Co.* (1896), 66 Mo. App. 296.

No. 105.**Clause excusing non-delivery.⁴¹**

This contract is contingent upon strikes, fires, pestilence, riots, war, rebellion, and other causes beyond our control.

No. 106.**Clause excusing non-delivery, or partial delivery, upon certain contingencies.⁴²**

Seller shall not be liable for any default, or delay, caused by any contingency beyond its control, or the control of its supplier, or manufacturer, with whom it may or shall contract to cover this sale, or the manufacturer who is to furnish these goods, preventing, or interfering, with the seller making delivery, including war, restraints affecting shipping, or credit, strike, lockout, accident, nonarrival, or delay, of steamer, or carrier, floods, droughts, short, or reduced, supply of fuel, or raw material, or excessive cost thereof, or of production over contract basis, and any other contingency, affecting the seller, or such suppliers, or manufacturers, as to manufacture, or supply, or delivery, to or from the seller; subject, also, to *force majeure* conditions in contract of such suppliers or manufacturers. The seller may deliver ratably with reference to all its customers, and also, its contracts with suppliers or manufacturers. Any delivery not made for any reason stated may be cancelled, at the seller's option.

No. 107.**Clause excusing partial non-delivery.⁴³**

If production should be curtailed during the time above specified by strikes, lockouts or counteract strikes, shortage of labor, or any casualty or accident or bankruptcy or insolvency, deliveries shall be made proportionate to the production.

⁴¹ Adapted from *General Commercial Co., Ltd., v. Butterworth-Judson Corp.* (1921), 198 App. Div. 799, 191 N. Y. Supp. 64.

⁴² Adapted from *Sparks v. Brown, Inc.* (1920), 184 N. Y. Supp. 557.

⁴³ Adapted from *Rosenstein v. Farish Co., Inc.* (1920), 185 N. Y. Supp. 42.

No. 108.**Same—another form.⁴⁴**

In the event of floods, drought, or any other unavoidable cause preventing the Seller from filling this contract in full, or in the event of supplying goods to, or interruption occasioned by request, order, or requisition of, the Government of the United States, or any governmental or war activity, the Buyer agrees to accept delivery from the Seller *pro rata* with the other civilian orders entered.

No. 109.**Clause permitting seller to alter terms of credit.⁴⁵**

Credit and delivery of goods shall be subject to the approval of the Seller, to whom all bills are payable, and who reserves the right to alter the terms and fix upon a limit of credit.

No. 110.**Clause permitting closing of contract upon bankruptcy or insolvency.⁴⁶**

If either party shall suspend payment, or become bankrupt, or insolvent, before the completion of this contract, the other party shall close the contract forthwith and notify such party thereof and of any differences which shall result therefrom, and such difference shall be for the account of the defaulter.

No. 111.**Clause providing for delivery of merchandise in transit, upon receipt thereof by seller.⁴⁷**

It is understood that the merchandise aforesaid now is in transit, bound for New York City, and, to the best information of the

⁴⁴ Adapted from *Osborn v. Wilson & Co., Inc.* (1922), 118 Misc. 379, 193 N. Y. Supp. 241.

⁴⁵ Adapted from *Melnick v. Borden* (1920), 185 N. Y. Supp. 305.

⁴⁶ Adapted from *Hauck Food Products Corp. v. H. A. Stevenson & Co.* (1921), 118 Misc. 31, 192 N. Y. Supp. 42.

⁴⁷ Adapted from *Reichbart v. Smith-Eisemann Corp. of America* (1922), 199 App. Div. 571, 191 N. Y. Supp. 803.

Seller, is due to arrive in New York City, within four weeks from the date hereof, and is to be delivered to the Buyer, if and when received by the Seller.

No. 112.

Clause limiting time for claims and limitation of damages.⁴⁸

It is agreed that a claim for defective material, short weight, or for any other cause, shall be made, not later than thirty (30) days after the receipt of goods, and that, in any event, the Seller shall not be liable for any damages, which may result from the use of the material sold hereunder.

No. 113.

Clause limiting time for return of goods or presentation of claims.⁴⁹

It is expressly agreed that no goods shall be returned, nor allowances made, nor claims survive, for any cause, after thirty (30) days from the delivery, nor, even prior to such time, after the goods shall have been sponged or cut.

No. 114.

Clause making each shipment separate contract, and providing remedies upon buyer's breach.⁵⁰

Each month's shipment shall be treated as a separate and independent contract; but, if the Buyer shall fail to fulfill the terms of payment under this, or any other, contract, the Seller, at his option, either may cancel this contract, or defer further shipments, until payment shall have been made.

⁴⁸ Cf. *Butler v. Supreme Council A. L. H.* (1905), 105 App. Div. 164, 93 N. Y. Supp. 1012.

⁴⁹ Cf. *Aultman v. Morse* (1882), 14 Fed. Rep. 152; *Horst Co. v. Breidt City Brewery* (1920), 94 N. J. L. 230, 109 Atl. 727.

⁵⁰ Cf. *Dow Chemical Co. v. Detroit Chemical Works* (1919), 208 Mich. 157, 175 N. W. 269, 14 A. L. R. 1200; *Cadillac Mach. Co. v. Mitchell-Diggins Iron Co.* (1919), 205 Mich. 107, 171 N. W. 479.

No. 115.**Clause terminating agreement of sale upon seller's failure to obtain lease for buyer.⁵¹**

That the Seller shall, on or before January 10, 1923, procure for the Buyer a lease of the premises wherein said business now is conducted, for a period of four (4) years, beginning January 10, 1923, at a rental of two hundred (\$200) dollars a month, payable in advance on the first day of each month, which lease shall contain the same terms and conditions (aside from rent and duration) as now are contained in the lease of said premises to the Seller; and, if the Seller shall not procure such a lease for the Buyer, then this agreement shall, on January 11, 1923, become null and void, and the Seller shall forthwith repay to the Buyer all moneys received by the Seller from the Buyer.

No. 116.**Clause waiving oral conditions.⁵²**

It is agreed that no conditions agreed to by any salesman, or agent, and not embodied herein, will be binding upon you; and it is understood and agreed that you shall not be liable, under any separate, or collateral, agreement, unless the same is in writing, and accepted by your manager, or assistant manager.

No. 117.**Covenant by seller not to engage in same business, within stated number of blocks, nor to accept trade of present customers.⁵³**

The Seller expressly covenants and agrees that, within a period of five years from the date hereof, he will not, either alone, or jointly with, or as agent or employe of, any one, and neither directly nor indirectly, carry on, or be engaged, employed, or interested in any stationery business, within the area of ten (10)

⁵¹ Cf. *Epperson v. Epperson* (1908), 108 Va. 471, 62 S. E. 344.

⁵² Adapted from *Misrach v. Oakland Motor Car Co.* (1922), 192 N. Y. Supp. 769.

⁵³ Cf. *State v. Barthe* (1889), 41 La. Ann. 46, 6 So. 531.

blocks in any direction from the block wherein the business hereby sold now is conducted by the Seller; nor shall the Seller, in any manner whatever, solicit, or accept, the custom, trade or business of any customer of said business, nor do any other act, which shall prejudice the business hereby sold or the rights of the Buyer therein.

CHAPTER V

CONDITIONAL BUYER AND SELLER

- No. 118—Agreement for conditional sale of automobile.
No. 119—Agreement for conditional sale of gas ranges—lease form.
No. 120—Agreement for conditional sale of piano—lease form.
No. 121—Agreement for conditional sale of refrigerator plant.
No. 122—Agreement for weekly hiring of sewing machine, with option by hirer to purchase machine.

No. 118.

Agreement for conditional sale of automobile.¹

AGREEMENT, made January 5, 1923, between Doe Motor Car Co., Inc., a corporation, duly organized under the laws of the State of New York, and having an office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The First Party agrees to sell to the Second Party, and the Second Party agrees to purchase from the First Party, one Doe touring automobile, motor number 464-123, and its equipment, for the price of fourteen hundred (\$1,400) dollars, which shall be paid by the Second Party as follows:

(a) Five hundred (\$500) dollars, upon the delivery of said motor vehicle to the Second Party; and

(b) The balance in three monthly installments of three hundred (\$300) dollars each, with interest at the rate of six per cent, on the 10th day of each month, beginning in the month following the initial payment hereunder.

2. (a) The First Party shall deliver the said motor vehicle to

¹ Cf. *Fuller v. Webster* (1915), 29 Del. 297, 95 Atl. 335; *Blackwood Tire & Vulcanizing Co. v. Auto Storage Co.* (1916), 133 Tenn. 515, 182 S. W. 576.

the Second Party, on or before January 10, 1923, and, simultaneously with the delivery thereof, the Second Party shall make the initial payment of five hundred (\$500) dollars, and shall, also, deliver to the First Party his three promissory notes, drawn to the order of the First Party, each in the amount of three hundred (\$300) dollars, payable, with interest at the rate of six (6%) per cent, at the First Party's office aforesaid, on, respectively, February 10, March 10, and April 10, 1923.

(b) All, or any, of said notes, may be sold, transferred or discounted by the First Party, without such First Party thereby waiving any of its rights and powers hereunder.

(c) In the event of the failure of the Second Party to make any payment when due as aforesaid, the entire balance of the purchase price then remaining unpaid shall immediately become due and payable.

3. The title to the said motor vehicle and equipment shall remain vested in the First Party, until all the agreements of, and payments to be made by, the Second Party, shall have been duly and punctually performed and made by said Second Party.

4. The Second Party shall not assign, or transfer, this contract, nor sell, or mortgage, the said motor vehicle and equipment, or his interest therein, nor suffer it to be attached, or, when not in use, to be removed from the garage at No. 571½ Broadway, Borough of Manhattan, New York City, without the written consent of the First Party first obtained.

5. During such time as title to the said motor vehicle and equipment shall remain vested in the First Party, the Second Party shall use the said motor vehicle and equipment with all reasonable care and caution, and shall be answerable to the First Party for any damage, or physical injury, to the said motor vehicle and equipment, which shall not be due to ordinary wear and tear.

6. (a) The First Party shall have access, at all times, during business hours, to said motor vehicle and equipment, whether in operation or not, for the purpose of inspecting and giving it such mechanical attention, as it may, in the First Party's judgment, require from time to time; and the Second Party authorizes the First Party, during the term of this agreement, to make such repairs to the aforesaid motor vehicle and equipment, from time to time, as, in the judgment of the First Party, shall, at any time, be

necessary, in order to maintain said motor vehicle and equipment in marketable condition, or to save it from excessive depreciation.

(b) The Second Party shall pay cash for all of such repairs, within ten (10) days from the presentation to him of an invoice therefor; and in the event of the Second Party's failure to make any such payment, when the same shall become due as aforesaid, the cost of said repairs shall be added to the monthly installment next due; and, if the Second Party shall fail to pay the same when such installment shall become due, the First Party shall have the right to resort to any of the remedies provided under paragraph "10" of this agreement.

7. The Second Party, at his own cost and expense, shall immediately cause the said motor vehicle and equipment to be insured against loss, or damage, by fire, theft, or collision, in an insurance company, or insurance companies, approved of by the First Party, in an amount equal to the purchase price thereof; and the loss, or damage, under said policy, or policies, shall be made payable to the First Party, as its interest shall appear; and the said policy, or policies, shall be maintained in force by the Second Party, until the entire purchase price herein provided for shall be actually received by the First Party.

8. In the event of the partial loss, or destruction, of said motor vehicle and equipment, by fire, or otherwise, the Second Party shall promptly give to the First Party written notice thereof; and the First Party shall, with due dispatch, make such repairs to said motor vehicle and equipment as may be necessary to restore it to its condition prior to such partial loss, or destruction; and, for that purpose, the First Party shall use and expend such net amount as it may receive on account of the insurance covering such loss, and the Second Party shall pay the balance, if any, of the cost of such repairs; but the First Party shall not be liable to the Second Party for any damages, which the Second Party may sustain, as a result of delays, temporary withdrawal from service, or from any other cause whatsoever, caused by such partial loss, or destruction.

9. In the event of the total loss, or destruction, of said motor vehicle and equipment, by fire, or otherwise, the First Party shall have the sole right to collect the insurance, or other form of indemnity that may be payable to it by reason of such loss, or destruction; and, thereafter, out of the total moneys received hereunder from the Second Party, plus the total moneys collected from the insur-

ance company, the First Party shall pay to itself the price of the motor vehicle and equipment herein mentioned and the interest on the total amount of deferred payments from the date of this agreement to the date of such total loss or destruction; and the First Party shall thereupon pay to the Second Party the balance, if any, which may remain, and the Second Party shall accept the same in full settlement of all amounts due hereunder, and this agreement shall thereupon and thereafter be void. If the insurance on said motor vehicle and equipment shall be insufficient to cover the loss or destruction of said property, the Second Party shall remain liable to the First Party for the unsatisfied balance of the purchase price thereof.

10. Upon the breach by the Second Party of any of the above covenants, or agreements, or upon the bankruptcy of, or insolvency of, or upon a general assignment by, the Second Party, or whenever, in the opinion of the First Party, the said motor vehicle and equipment shall be threatened with loss, damage, or destruction of any kind; except reasonable wear and tear, or with the imposition of a lien, or adverse claim of any kind, or, in the event of the failure of the Second Party to make any of the said payments when the same shall become due, as aforesaid, the First Party may retake possession of said motor vehicle and equipment, free of all claims whatsoever; and, to that end, the First Party may, without notice to the Second Party, enter the premises of the Second Party, or any other premises, where said motor vehicle and equipment may be found, and, with or without legal process, take and remove said motor vehicle and equipment attached thereto, or used in connection therewith, or any of said chattels; and the Second Party hereby waives any action for trespass, or damage, therefor, and waives any right of resistance thereto; and the First Party, in that event, may retain, as compensation for the use of said motor vehicle and equipment and for the depreciation thereto, any sums of money, which the Second Party may have theretofore paid in respect of said motor vehicle and equipment.

11. If this agreement shall be assigned by the First Party, the assignee shall have all of the rights of the First Party hereunder.

12. All promises, understandings or agreements of any kind, pertaining to this purchase, or to this agreement, not contained herein, are hereby expressly waived; and it is agreed that this

instrument shall constitute the entire agreement between the parties hereto.

IN WITNESS WHEREOF, the First Party has caused this instrument to be signed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

Doe Motor Car Co., Inc.,

By John Doe,

President.

(Seal)

Attest:

John Jones,

Secretary.

Richard Roe. (L.S.).

No. 119.

Agreement for conditional sale of gas ranges—lease form.²

AGREEMENT, made January 5, 1923, between John Doe & Co., Inc., a corporation, duly organized under the laws of the State of New York, and having an office at No. 371½ Broadway, Borough of Manhattan, New York City (herein called the "Company"), and Richard Roe, residing at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "Consumer"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The Company agrees to let to the Consumer, and the Consumer agrees to hire from the Company, twenty-five 35 x 16 Doe gas ranges, for a period of not less than one year from the date of delivery, at a yearly rental of three and 60/100 (\$3.60) dollars each, which the Consumer shall pay to the Company on the second day of each year in advance.

2. The Company shall deliver the said gas ranges to the premises, known as No. 111½ Broadway, Borough of Manhattan, New York City, when the building now being erected thereon shall be completed and the gas meters to be used therein are installed; but the Company shall not be responsible for any breakage, or any parts which may be lost, after such gas ranges shall have been receipted for by the Consumer.

² Adapted from *Central Union Gas Co. v. Browning* (1913), 210 N. Y. 10, 103 N. E. 822.

3. Each range shall be set up by the Consumer in a proper and workmanlike manner, and the work, in connection therewith, shall be performed to the satisfaction of the Company; and, in default thereof, the Company shall have the right to declare this lease null and void. The Company shall neither assume nor incur any liability by reason of any defective work, nor shall the Company be responsible for any injury, or damage, which may result from the careless, or improper, use of said ranges, or otherwise.

4. The title to the said ranges shall, at all times, remain in the Company, irrespective of any sale, lease or transfer of said premises; and the said gas ranges shall not be removed from the said premises, without the written consent of the Company first obtained. If a change in the location of any of said ranges shall become necessary, the Company shall effect such change, upon the application, and at the expense, of the Consumer.

5. The Consumer shall pay for any damage to the said gas ranges, while the same are in his possession, which may be due otherwise than to the ordinary wear and tear incident to the use thereof; and the Consumer shall duly surrender such ranges to the Company, at the termination of this agreement, or upon the Consumer's failure to comply with the conditions hereof.

6. If the Consumer shall fail to comply with the conditions of this agreement, or shall cease to use the gas supplied by the Company, the Company shall have the right to enter the said premises and to remove the said gas ranges therefrom, without process of law.

7. In the event that the Company shall remove the said ranges, by reason of the Consumer's failure to comply with any of the conditions of this agreement, all sums theretofore paid by the Consumer hereunder shall be retained by the Company, as its reasonable compensation for the rent of, injury to, and wear and tear of, the said gas ranges, up to the time when the last payment so made became due and payable; but this shall not be construed to preclude the Company from pursuing any legal remedy for the recovery of any other sum, or sums, which may be due to it, under the terms hereof.

8. Unless previously terminated in writing, this agreement shall be extended from year to year, for a period of six years from the date hereof. The Consumer, however, shall have the option, within one year from the date hereof, to purchase the said gas ranges

from the Company, at the price of twelve (\$12) dollars each, or, when six consecutive yearly payments (aggregating five hundred and forty (\$540) dollars) shall have been made to the Company; and, in either of said events, the gas ranges shall become the property of the Consumer, and the Company shall thereupon execute and deliver to the Consumer a bill of sale therefor.

IN WITNESS WHEREOF, the Company has executed this instrument, by its President, thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary, and the Consumer has hereunto set his hand and seal, the day and year first above written.

John Doe & Co., Inc.,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

In the presence of
Henry Koe.

No. 120.

Agreement for conditional sale of piano—lease form.³

AGREEMENT, made January 5, 1923, between Doe Piano Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Lessor"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Lessee"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The Lessor hereby agrees to lease to the Lessee, and the Lessee hereby agrees to rent from the Lessor, one baby grand Doe Piano, No. 1112, of the agreed value of two thousand (\$2,000) dollars.

2. The Lessee agrees to pay to the Lessor, at its office above stated, for the use of said piano, the sum of five hundred (\$500)

³ Cf. *Lauter Co. v. Isenreath* (1909), 77 N. J. L. 323, 72 Atl. 56.

dollars, upon the signing of this agreement, and the balance of fifteen hundred (\$1,500) dollars in installments of sixty (\$60) dollars each, on the fifth day of each month thereafter, together with interest as hereinafter provided.

3. The Lessor, at its own cost and expense, shall deliver the said piano to the Lessee, at his residence, No. 37½ Broadway, Borough of Manhattan, New York City, on or before January 7, 1923.

4. The Lessee further agrees:

(1) That said piano shall not be removed from the said premises, No. 37½ Broadway, Borough of Manhattan, New York City, without the consent of the Lessor first had in writing.

(2) That said piano shall be preserved, and, when returned to, or otherwise repossessed by, the Lessor, shall be in as good condition as when delivered to the Lessee, ordinary wear, resulting from careful use, alone excepted.

(3) That the Lessor may, from time to time, by its agents, enter the said premises to examine and inspect the said piano, and that no tuners, regulators, or repairers, except those employed by the Lessor, shall be permitted to do any work whatsoever upon the said piano, during the continuance of this agreement.

(4) That, in case of any damage to the said piano, by any cause other than careful use, the Lessee shall pay to the Lessor the amount of such damage.

(5) That, in case of the destruction of the said piano from any cause other than fire, the Lessee shall pay to the Lessor the above valuation, less the total amount of any rent, which may have been paid hereunder.

(6) To pay interest at the rate of six (6%) per cent per annum on monthly balances, payable monthly.

(7) Not to mortgage, sublet, nor assign his interest in this agreement, nor, in any way, encumber the said piano, nor suffer any charge, lien or encumbrance to be placed thereon.

(8) That, upon his default in any of the aforesaid payments, or in the performance of any of his covenants, or obligations, hereunder, all of the said payments shall, at the option of the Lessor, become due and payable, and the Lessor shall be entitled to sue for and recover the same.

5. That, if the Lessee shall fail to perform any of the terms of this agreement, then the Lessor shall have the right, at its option, without further notice or demand, to take possession of the said

piano, and remove the same, and, for that purpose, to enter any premises where the Lessor shall have reasonable cause to believe the said piano to be, without being deemed to have done anything wrongful, and, upon such taking, the terms of this agreement and the right of the Lessee to hold, or use, the said piano, shall cease, without prejudice, however, to any right, or claim, of the Lessor for arrears of rent, if any, or on account of any preceding breach of this agreement, and irrespective of whatsoever action, if any, may have been begun by the Lessor to recover upon any claim for rent, or otherwise.

6. That no other contract, or understanding, of any kind, has been entered into by the Lessor and Lessee, altering, or changing, in any way, the terms of this agreement.

7. That all of the terms of this agreement have been read, understood and are agreed by the Lessee to be just and reasonable before signing.

IN WITNESS WHEREOF, the Lessor has caused this agreement to be signed by its President, thereunto duly authorized, and its corporate seal to be hereunto affixed, attested by its Secretary, and the Lessee has hereunto set his hand and seal, the day and year first above written.

Doe Piano Co., Inc.,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

In the presence of
Henry Koe.

We hereby agree that, if the above-named Lessee shall perform all his covenants and obligations under the foregoing agreement, and shall make each of the foregoing payments and interest payments as the same shall become due, then, and in such event, and in further consideration of the payment to us of one (\$1) dollar, we shall sign and deliver to said Lessee a bill of sale for said piano.

Dated, New York City, January 5, 1923.

Doe Piano Co., Inc.,
By John Doe,
President.

No. 121.

Agreement for conditional sale of refrigerator plant.⁴

AGREEMENT, made January 5, 1923, between Doe, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 15 Main Street, City of Auburn, County of Cayuga, State of New York (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The First Party shall construct and deliver to the Second Party, f.o.b., cars at Auburn, New York, the machinery, apparatus and plant described in the specification hereto annexed, which specification, together with the agreements and guarantees therein contained, are hereby expressly made a part of this agreement.

2. The Second Party shall pay to the First Party the sum of two thousand (\$2,000) dollars for said machinery, apparatus and plant, as follows:

(a) One thousand (\$1,000) dollars in cash, upon the signing of this agreement.

(b) Upon delivery of said machinery, apparatus and plant to the Second Party, the Second Party shall deliver to the First Party his two promissory notes to the order of the First Party, each in the sum of five hundred (\$500) dollars, payable, with interest at the rate of six (6%) per cent, at the First Party's office aforesaid, on April 5 and May 5, 1923, respectively.

3. The First Party shall deliver the machinery, apparatus and plant on the premises of the Second Party, at No. 15 Main Street, City of Auburn, County of Cayuga, State of New York, on or before March 5, 1923, provided the Second Party shall have performed, within the time limit specified therefor, all the agreements by him to be kept and performed, as set forth in the annexed specification.

4. When and as the whole, or any portion, of said machinery, apparatus and plant, shall be delivered on the premises of the Second Party, the Second Party, at his own cost and expense, shall

⁴ Adapted from *Ratchford v. Cayuga, etc., Warehouse Co.* (1916), 217 N. Y. 565, 112 N. E. 447, L. R. A. 1916 E, 615.

immediately cause the same to be insured against loss, or damage, by fire, in an insurance company approved of by the First Party, in an amount equal to the purchase price thereof; and the loss, or damage, under such policy, shall be payable to the First Party as its interest shall appear; and said policy shall be maintained in force by the Second Party, until the entire purchase price herein provided for shall have been actually received by the First Party.

5. (a) Title to, and ownership of, the said apparatus, machinery and plant, shall remain vested in the First Party, until the entire purchase price herein provided for, and all notes and securities given to secure the same, or any part thereof, shall be actually paid in cash; and, in case of the failure, or refusal, of the Second Party to make the payments, or any of them, when due, or to execute and deliver the notes, or to pay any note that may be given to the First Party, when the same shall fall due, then, and in any such event, the whole of the unpaid portion of the purchase price, however secured and whenever payable, shall, at the option of the First Party, become immediately due and payable; or, in case of such default on the part of the Second Party, the First Party shall thereupon have the right to enter the premises upon which such machinery, apparatus and plant shall be installed, and take possession of, and remove the same, and the Second Party shall afford every facility therefor; and, in the event that said machinery, apparatus and plant shall be so taken by the First Party, the Second Party shall pay to the First Party all expenses incurred by the First Party under this contract, and all damages suffered by the First Party, by reason of the wear and tear of said machinery, apparatus and plant, and such further sum of money as will reasonably compensate the First Party for the use or rental by the Second Party of said machinery, apparatus and plant, which rental is hereby fixed and agreed to be six (6%) per cent per annum of the total purchase price herein provided, to be calculated from the date when said machinery, apparatus and plant are erected ready to charge.

(b) The foregoing provisions shall not, however, in any wise, alter, or impair, the obligation of the Second Party to keep said machinery, apparatus and plant in good condition, while in the custody of the Second Party, nor shall the Second Party be released from liability to pay to the First Party all damage to such machinery, apparatus or plant, which may be occasioned by the negligence, carelessness or abuse thereof by the Second Party.

6. The First Party shall have the right to file a mechanic's lien for materials and labor furnished under this contract; and this provision is hereby declared to be notice to the Second Party, and to the owner, or reputed owner of the property, as given at the time of furnishing such materials and labor for said plant, or for repairs, alterations, or additions thereto, of the intention to file a lien, and a waiver by the Second Party of any other notice of such intention.

7. This agreement shall inure to, and be binding upon, the heirs, successors and assigns of the parties hereto.

8. This contract shall only become operative, when the same shall have been approved in writing by the President, or Vice-President, of the First Party.

IN WITNESS WHEREOF, the First Party has caused this instrument to be signed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

Doe, Inc.,

By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

[Annex Specification.]

No. 122.

Agreement for weekly hiring of sewing machine, with option by hirer to purchase machine.⁵

AGREEMENT, made January 5, 1923, between Doe Sewing Machine Co., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Owner"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Lessee"),

⁵ Cf. *Singer Sewing Machine Co. v. Holcomb* (1874), 40 La. 33; *Cowan v. Singer Mfg. Co.* (1893), 92 Tenn. 376, 21 S. W. 663; *Singer Mfg. Co. v. Nash* (1898), 70 Vt. 434, 41 Atl. 429.

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

I. The Owner hereby agrees to let to the Lessee, on a weekly hiring, the Doe sewing machine described as style 1-A, bearing No. 10200, and the accessories therefor; and, in consideration thereof, the Lessee hereby agrees, as follows:

(a) That the Lessee has received the said machine and accessories in good order.

(b) To pay the Owner, at its said place of business, the rent therefor, as follows:

1. The sum of five (\$5) dollars in cash (for which a receipt, bearing the number 500, has been received by the Lessee), and which, with the allowance of ten (\$10) dollars for the old machine No. 400, belonging to the Lessee, shall constitute the rent for the first week; and

2. The sum of fifteen (\$15) dollars in cash, on the first business day of each week, until the said machine shall have been returned to the Owner, or purchased by the Lessee, as herein provided.

(c) To keep the said machine and accessories undefaced and in good order (theft, damage and loss by fire included), fair wear only excepted, and, at all times, to permit the Owner, or any person employed by it, to inspect the same.

(d) To keep the said machine and accessories in the Lessee's own custody, as bailee, at the address above stated, and not to remove the same, without the Owner's consent in writing first obtained, and to return the same in good order, at the termination of this lease.

(e) That, if the Lessee shall not duly perform this agreement, the Owner may (without prejudice to its right to recover arrears of rent and damages for breach of this agreement), summarily terminate this lease and retake possession of the said machine and accessories, and, for that purpose, leave and license is hereby given to the Owner to enter any premises occupied by the Lessee, or of which the Lessee is a tenant, to search for and retake possession of said machine and accessories, without notice, and without being liable to any suit, action, indictment or other proceeding by the Lessee, or any one claiming under him.

(f) That, when this lease is terminated, or the said chattel is, in any manner, repossessed by the Owner, the Lessee shall not, on any ground whatsoever, statutory or otherwise, be entitled to any allowance, credit, return, or set off, for payments previously made,

but all such payments theretofore made shall be retained by the Owner as compensation for the use thereof, and that, except as forbidden by law, the Lessee hereby waives the provisions of the Personal Property Law of the State of New York.

(g) That time, indulgence, or concession, granted by the Owner to the Lessee, shall not alter, or invalidate this agreement, nor constitute a waiver of any of the provisions hereof, after such time, indulgence, or concessions shall have been granted.

(h) That the value of the machine hereby rented is three hundred (\$300) dollars; and that he will accept, as an allowance for the Lessee's old machine, the sum of ten (\$10) dollars; and the Lessee hereby sells the said old machine to the Owner.

(i) The Lessee hereby acknowledges the receipt of a true and correct copy of this lease.

II. The Owner further agrees:

1. That the Lessee may terminate this lease at any time, by delivering to the Owner said machine and accessories.

2. That the Lessee may, at any time, become the purchaser of said machine and accessories, by paying in cash to the Owner the value thereof stated above.

3. That, if such purchase shall be effected, credit will be given to the Lessee for the allowance made for the Lessee's old machine, if any, and for all cash payments previously made, under this agreement.

4. That, if full payment is made within a period of one month from the date hereof, a discount of five (5%) per cent shall be allowed from the said stated value.

5. That, if full payment is made within a period of three months from the date of this agreement, a discount of two (2%) per cent shall be allowed from the said stated value.

6. That, if payments are made regularly upon this account, at the rate of fifteen (\$15) dollars per month, a discount of one (1%) per cent shall be allowed from the said stated value.

Witness, the hands of the parties.

Doe Sewing Machine Co.,

By John Doe.

Richard Roe.

In the presence of

John Jones,

121½ Broadway, New York City.

CHAPTER VI

DEBTOR AND CREDITOR

- No. 123—Agreement of adjoining land owners, whereunder one is permitted to erect a party wall, and the other agrees to pay his share of the value, upon using it.
- No. 124—Agreement of adult ratifying debt incurred when a minor.
- No. 125—Agreement of arbitrators selecting and appointing a third arbitrator—official form.
- No. 126—Agreement of composition.
- No. 127—Agreement of composition, made after assignment for benefit of creditors, whereunder assignee is to resign and to account to creditors' committee, and third party conveys real property to creditors' committee in consideration of creditors releasing debtor, and creditors' committee is authorized to manage and sell all property of debtor, and to distribute proceeds among the creditors.
- No. 128—Agreement of compromise and settlement to avoid contest of will.
- No. 129—Agreement of compromise and settlement of claim for liquidated damages, whereunder pending action is to be discontinued.
- No. 130—Agreement of compromise and settlement, whereunder fixed sum is to be paid monthly for life to one party, who agrees to assign and surrender certain instruments and to withdraw and refrain from making statements derogatory to other party and his wife.
- No. 131—Agreement of creditor to pay debtor's debt to another creditor.
- No. 132—Agreement between lender and merchant for loaning money upon the latter's merchandise accounts.
- No. 133—Agreement for building loan.
- No. 134—Agreement for loan to member of a joint adventure by trust company, which is to receive and disburse the moneys earned by the joint adventure.

- No. 135—Agreement reviving debt barred by statute of limitations.
- No. 136—Agreement submitting controversy to arbitrator for hearing and decision—official form.
- No. 137—General release.
- No. 138—Mutual releases between an individual and an administratrix of an estate acting in her individual and representative capacity.
- No. 139—Plan and agreement for re-adjustment of indebtedness of two corporations, whereunder mortgage and debenture bonds are to be exchanged for new debentures, guaranteed as to principal and interest by another corporation, with notice of adoption of plan.
- No. 140—Plan and agreement for reorganization of corporation, whereunder new corporation is to be formed to take over all of its assets, subject to existing claims and indebtedness, which new corporation is to assume and to pay partly in cash and partly by issue of bonds, and whereunder stockholders of old corporation are to receive stock of new corporation in exchange for their holdings.
- No. 141—Agreement whereunder reorganization committee is authorized by bondholders to prepare, adopt and execute a plan for the reorganization of a railway company, which has defaulted on its mortgage.

No. 123.

Agreement of adjoining land owners, whereunder one is permitted to erect a party wall, and the other agrees to pay his share of the value, upon using it.¹

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party is the owner of a parcel of land situated on the northerly side of 46th Street between Whiteacre and Blackacre Avenues, in the Borough of Manhattan, New York City, being the same premises conveyed to the First Party by Henry Koe,

¹ Adapted from *Sebald v. Mulholland* (1898), 155 N. Y. 455, 50 N. E. 260.

by deed dated May 20, 1922, and recorded in the office of the register of the county of New York on May 20, 1922, in liber 14a of conveyances, page 255; and

WHEREAS, the Second Party is the owner of the parcel of land adjoining the aforesaid property of the First Party, on the easterly side thereof, being the same premises conveyed to the Second Party by Richard Koe, by deed dated April 16, 1920, and recorded in the office of the register of the county of New York on April 16, 1920, in liber 15a, of conveyances, page 360; and

WHEREAS, the First Party is about to erect a building on his aforesaid parcel of land; and

WHEREAS, it has been agreed that the wall of said building shall be a party wall, and shall be constructed and erected, to the extent of one-half of its thickness, upon the aforesaid land of each party:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the said wall so to be constructed by the First Party shall be used and maintained as a party wall forever.

2. That the First Party shall be permitted, freely and without interference, or hindrance, to enter upon the parcel of land of the Second Party, for the purpose of excavating and constructing the said party wall.

3. That the said party wall so to be constructed shall not extend nearer the street than the front wall of the building on the easterly side of said parcel of land, from which point it may be extended northerly for a distance not exceeding fifty-five (55) feet; that the party wall so to be constructed shall be laid on good and sufficient bottom stone, which shall be bedded not less than nine (9) feet below the curbstone in front of the dividing line between the said parcels of land; that the foundation of said wall so to be constructed shall be made and constructed of good stone, and shall be not less than twenty-four (24) inches in thickness to the underside of the first tier beams; that, above the underside of the first tier beams, it shall be made and constructed of sound hard brick, and shall be not less than sixteen (16) inches in thickness all of the way up to the roof of the building of the First Party; and that it shall be extended and constructed to a proper height above the roof of such building, and shall be covered with a proper coping of bluestone.

4. That, whenever the Second Party shall desire to use said party wall, the Second Party shall pay such proportion of the value

of said wall as the portion thereof, which he may use, shall bear to the value of the whole of said wall, and such value shall be ascertained, in the event of a disagreement in respect thereof between the parties, by arbitration; and each party, in the event of such disagreement, shall choose one disinterested person to ascertain and fix such valuation, and, in case the persons so chosen shall be unable to agree, the persons so chosen shall choose a third person to aid in ascertaining and fixing such valuation, and a decision of any two of such persons, shall be binding upon both parties.

5. That, if either party shall, at any time, desire to raise said wall to a greater height than that to which it may at first be carried, he shall be at liberty to do so, and such additional wall shall be made and constructed by such party wholly at his expense, unless the other party shall desire to use the whole, or any portion, of such additional wall; and, in such a case, such other party shall pay for the same in the manner above provided for the main wall.

6. That, if it shall be necessary, at any time, to repair, or rebuild, the whole, or any portion, of said wall, the expense of such repairing, or rebuilding, shall be borne equally between the said parties as to such portions of such wall as shall be used in common by them, and the cost of repairing, or rebuilding, the remaining portion thereof shall be borne wholly by the party, who may exclusively use the same.

7. That, whenever said wall shall be repaired, or rebuilt, it shall occupy the same space and shall be of the same, or similar, materials, and of the same size, as the present wall, unless any law, or laws, hereafter in force and effect, shall require a wall of different dimensions; and, in such event, such wall, when so repaired, or rebuilt, shall be of the dimensions required by such law, or laws.

8. That nothing in this agreement contained shall be deemed to vest in either party any part of the fee of the soil upon which the said party wall shall stand.

9. That this agreement shall be perpetual, and shall bind the parties hereto, and their respective heirs, administrators and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

No. 124.

Agreement of adult ratifying debt incurred when a minor.²

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party, on or about August 1, 1922, sold and delivered to the Second Party certain goods, wares and merchandise, consisting of five yards of cloth, of the reasonable value of fifty (\$50) dollars; and

WHEREAS, at the time of the sale and delivery of such goods, wares and merchandise, the Second Party was under the age of twenty-one years; and

WHEREAS, the Second Party attained the age of twenty-one years on December 1, 1922, and desires to ratify and pay the said debt, with interest thereon at the rate of six (6%) per cent per annum from August 1, 1922:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the Second Party hereby ratifies his aforesaid purchase of certain goods, wares and merchandise, consisting of five yards of cloth, of the reasonable value of fifty (\$50) dollars, sold and delivered by the First Party to the Second Party, on or about August 1, 1922.

2. That the Second Party shall pay to the First Party, and the First Party shall receive from the Second Party, the said sum of fifty (\$50) dollars, with the interest thereon at the rate of six (6%) per cent per annum from August 1, 1922, within three months from the date hereof, in full payment of the said goods, wares and merchandise so sold and delivered on or about August 1, 1922.

3. That, for a period of three months from the date hereof, the First Party shall not institute any suit, or action, against the Second Party to recover the said sum of fifty (\$50) dollars.

² Cf. *Edmando v. Mister* (1881), 58 Miss. 765; *N. H. Mutual Fire Ins. Co. v. Noyes* (1855), 32 N. H. 345.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

No. 125.

Agreement of arbitrators selecting and appointing a third arbitrator—official form.³

ARBITRATION SOCIETY OF AMERICA

John Doe

—and—

Richard Roe

*Designation of Third
Arbitrator*

The undersigned, having been duly designated as Arbitrators under the terms of a Submission entered into by the above parties, and dated January 5th, 1923, do hereby select and appoint John Jones of No. 37½ Broadway, Borough of Manhattan, New York City, as the third Arbitrator, pursuant to said submission.

Dated, New York, January 5th, 1923.

Henry Koë.

Richard Koë.

No. 126.

Agreement of composition.⁴

THIS AGREEMENT, made January 5, 1923, by John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Debtor"), and such of the creditors of the said Debtor, who shall become parties hereto (herein called the "Creditors"), WITNESSETH:

WHEREAS, the Debtor has been, and still is, engaged in the business of buying and selling books, stationery and other articles at No. 37½ Broadway, Borough of Manhattan, New York City; and

³ Adapted from the form prepared and used by the Arbitration Society of America, in New York City.

⁴ Adapted from *White v. Kuntze* (1887), 107 N. Y. 518, 12 St. Rep. 297, 27 Week. Dig. 487.

WHEREAS, the Debtor, in the course of transacting his business, has incurred divers debts, which he is unable to pay in full:

NOW, THEREFORE, IT IS HEREBY AGREED, AS FOLLOWS:

1. That the Creditors, each for himself, and not for the others, hereby severally agree with the Debtor, and with each other, to accept from the Debtor, and the Debtor agrees to deliver to each of us, in full satisfaction and discharge of our respective claims of every kind, whether now due, or which may hereafter become due, the sum of thirty-three and one-third ($\$33 \frac{1}{3}$) cents for each and every dollar of said indebtedness, to be paid in notes made by the Debtor, payable to our order, respectively, in three equal installments, at three months, six months and nine months from February 10, 1923.

2. That the Creditors, each for himself, and not for the others, hereby severally agree with the Debtor, and with each other, as follows:

(a) That, upon the delivery of said notes to each of us, such delivery shall operate as a complete release and discharge of all of our respective claims and demands against him, and, thereupon, we shall severally surrender to him any and all notes, or other evidences of indebtedness, which we may hold against him.

(b) That the Debtor may compromise with any other creditor, whose claim is less than two hundred (\$200) dollars in amount, in such manner as the Debtor may deem advisable, anything hereinbefore contained to the contrary notwithstanding.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Debtor.

Richard Roe (L.S.).

Henry Koe (L.S.).

John Smith (L.S.).

Thomas Brown (L.S.).

Creditors.

In the presence of
John Jones.

No. 127.

Agreement of composition, made after assignment for benefit of creditors, whereunder assignee is to resign and to account to creditors' committee, and third party conveys real property to creditors' committee in consideration of creditors releasing debtor, and creditors' committee is authorized to manage and sell all property of debtor, and to distribute proceeds among the creditors.⁵

AGREEMENT, made January 5, 1923, by John Doe and Richard Roe, individually and as partners engaged in business under the firm name of "Doe & Co.," and having an office at No. 11½ Broadway, Borough of Manhattan, New York City (herein, individually, jointly and severally called the "First Party"), and Henry Koe, as assignee for the benefit of creditors of Doe & Co., residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), and John Smith, residing at No. 57½ Broadway, Borough of Manhattan, New York City (herein called the "Third Party"), and John Jones, Thomas Jones, and Henry Jones, all residing at No. 87½ Broadway, Borough of Manhattan, New York City (herein called the "Trustees"), and the undersigned creditors of Doe & Co. (herein, individually, jointly, and severally, called the "Fifth Parties"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The Second Party hereby agrees:

(a) To resign as the assignee for the benefit of creditors of Doe & Co.;

(b) To consent to the substitution of the Trustees in his place as such assignee;

(c) To account to said Trustees for all of his acts while such assignee;

(d) To account to said Trustees for all property conveyed to him by the deed of assignment, executed and delivered to him on December 15, 1922; and

(e) To convey to the said Trustees all property, for which, as such assignee, he is, or may be, accountable.

2. The First Party hereby authorizes and directs the Second

⁵ Adapted from *Painter v. Fletcher* (1918), 182 App. Div. 616, 169 N. Y. Supp. 914.

Party to perform each and every act that the Second Party has herein agreed to perform, and the First Party agrees to execute and deliver to the Trustees any and all instruments that may be necessary, or proper, to vest the Trustees with all rights at law or in equity of an assignee for the benefit of creditors of the firm of Doe & Co., so that the Trustees may occupy fully the situation in respect of the First Party and of the First Party's creditors, that the Second Party has occupied, by virtue of the general assignment heretofore executed and delivered to the Second Party.

3. (a) The Third Party hereby agrees to transfer and convey to the Trustees the following described premises in the Borough of Manhattan, New York City, for the purpose of being held, or disposed of, for the benefit of the Fifth Parties, in accordance with the terms of this agreement, which premises are more particularly bounded and described, as follows:

ALL that certain lot, piece or parcel of land, with the buildings, and improvements, thereon erected, situate, lying and being in the Borough of Manhattan, City of New York, and described as follows:

BEGINNING * * *

(b) The deed and conveyance herein shall only be made upon the condition, and for the consideration, that the First Party shall be first released of all debts owing by the First Party to the Fifth Parties.

(c) The Third Party, in and by said deed, shall give and grant to the Trustees, in respect of the real property therein described, all of the powers and authority given to the Trustees by the Fifth Parties, under any of the provisions of this agreement.

4. The Trustees hereby agree:

(a) To act as assignees for the benefit of creditors of Doe & Co.;

(b) To take, hold, manage, and sell the real property conveyed to them, by the Third Party, for the benefit of the Fifth Parties, and for their benefit only; and

(c) To distribute the net proceeds of the income and sale of the same, after the payment of their expenses, counsel fees and commissions therein, at the rate provided by law for assignees for the benefit of creditors, among the undersigned creditors entitled to participation, in the proportion that their respective debts shall bear to the whole sum entitled to participation.

5. The Fifth Parties (each for himself, and not for any other

or others, and alike individually, jointly and severally), hereby release the First Party from each and all of their debts and obligations to them, and to each of them, and they agree to execute and deliver individual general releases of the same to the First Party, and further agree to deliver to the Trustees all evidences of said debts and obligations, with proof of their claims.

6. In addition to the power, or powers, possessed by the Trustees, when they shall have been substituted as assignee for the benefit of creditors, in the place of the Second Party, the Fifth Parties give to the said Trustees the following powers, to wit:

(a) To take, hold, manage, sell, or dispose of, all property coming into their hands for the benefit of the Fifth Parties, according to their judgment;

(b) In selling, or disposing, of any property, to do so in such manner, and upon such terms as shall seem best to them;

(c) To hold any, or all, of the property coming into their hands for such reasonable time as will, in their opinion, secure the best results in the sale thereof;

(d) To bring and prosecute, with the aid of counsel, any legal proceedings that, in their judgment, may be proper for realizing upon the assets of the First Party;

(e) To settle and compromise any and all claims, or suits, or actions, or legal proceedings, whether brought against them, or against the First Party, or which may exist in favor of the First Party, or in favor of the Fifth Parties, or in favor of the Trustees themselves, or in the matter of the general assignment herein;

(f) To execute and give any and all assignments, releases, mortgages, or other instruments, as they may be advised in any such matters; and

(g) To execute and deliver any deeds, or other legal instruments, that, in their opinion, may be necessary, or proper, for carrying out the purposes of their trust.

7. The Fifth Parties hereby constitute the Trustees, the attorneys, agents and trustees of each, and all, of them, for the purpose of carrying out this agreement, and the Fifth Parties hereby, irrevocably, constitute and appoint the Trustees their true and lawful attorneys, to execute, in their behalf, such instruments in writing, and to do such acts and things as to them may seem proper, to enable them to carry out the trust and duties incumbent upon them, and the powers and authority granted them

herein, or possessed by them in their relation of assignees for the benefit of creditors as aforesaid; hereby granting to the said Trustees, and to their successors, full power and authority to do and perform all and every act and thing which they may deem requisite and necessary to be done, in and about the said premises, as fully, to all intents and purposes, as the Fifth Parties might, or could, personally do.

8. The Fifth Parties hereby give to the Trustees the power to do any and all of the acts, or things, they are authorized to do herein, in accordance with the direction of a majority of them, and they are expressly empowered to execute any instrument, which may require the signatures of the Trustees, by the signatures of a majority of such Trustees.

9. That, in the event of the death of any of the Trustees, all of the rights, powers and duties herein conferred shall devolve upon, and be continued in, the survivors of them, who shall act, and continue to act, in every way, in accordance with the direction of a majority of such survivors.

10. The Fifth Parties hereby agree that, upon creditors of the First Party representing ninety (90%) per cent of the indebtedness of such First Party signing this instrument, this agreement shall be, and continue, operative, so far as said signing creditors shall be concerned.

11. (a) That, upon the resignation of the Second Party, as assignee for the benefit of creditors as aforesaid, and upon his accounting to the said Trustees for all property which may have come into his hands, as such, and upon the acceptance by the said Trustees of such property, and upon the Trustees being satisfied of the correctness of the Second Party's accounts, as such assignee for the benefit of creditors, during the holding of said property, that the Second Party shall be released from all obligations as such assignee for the benefit of creditors, and that his obligations, under his bond, and the obligations of the surety therein, shall be cancelled and discharged, and that an order to such effect, and an order cancelling the bond and discharging the Second Party as such assignee for the benefit of creditors, may, thereupon, be entered in the Supreme Court, New York County.

(b) The Fifth Parties hereby authorize and empower the Trustees (a) to appear, in their behalf, and to accept, or waive, in their behalf, and in behalf of each of them, all notice of proceedings,

upon the accounting of the Second Party, as such assignee for the benefit of creditors, as well as of any proceedings to terminate his obligations as such assignee for the benefit of creditors; (b) to execute a release, or releases, to him, upon being satisfied that the Second Party is entitled thereto; (c) to appear and act, in all respects, in any such proceeding, before the Supreme Court, New York County, as the attorneys and representatives of the said Fifth Parties, and to accept service of all papers therein for them, and each of them; and (d) to appear and consent, in their behalf, to the discontinuance of any, and all, proceedings, in bankruptcy, brought against the First Party.

12. That, in transferring, conveying, or delivering, the property to the Trustees, the Second Party may deduct therefrom the actual expenses of such assigneeship, including the rent of office, proper expenses, clerk hire, cost of his surety bond, the cost of the audit company for examining the books, in behalf of the committee of creditors, and the incidental expenses of the said committee (if the same shall have been paid by the assignee), and a reasonable charge for counsel fees, to be approved by the Trustees, and other general expenses approved of by the Trustees; but no charge shall be made by the Second Party for legal commissions.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.),

Richard Roe (L.S.),

(herein called the "First Party").

In presence of
James White.

Henry Koe (L.S.),

as assignee for the benefit of creditors of
Doe & Co. (herein called the "Second
Party").

John Smith (L.S.),

(herein called the "Third Party").

John Jones (L.S.),

Thomas Jones (L.S.),

Henry Jones (L.S.),

as Committee and Trustees for Creditors
(herein called the "Trustees").

Jane Jones (L.S.),

Harvey Green (L.S.),

Creditors.

No. 128.

Agreement of compromise and settlement to avoid contest of will.⁶

THIS AGREEMENT, made January 5, 1923, by John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe and Henry Roe, both residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Parties"), WITNESSETH:

WHEREAS, each of the parties hereto is an heir of one Jane Doe, now deceased; and

WHEREAS, the said Jane Doe, in her lifetime, on February 10, 1920, signed, sealed, and declared a certain instrument, purporting to be her last will and testament, as and for her last will and testament; and

WHEREAS, the Second Parties have offered said last will and testament for probate in the Surrogates' Court, New York County; and

WHEREAS, the said Jane Doe, in her said last will and testament, made certain gifts, devises and bequests to each of the said parties hereto; and

WHEREAS, the said First Party, in good faith, is about to contest the said last will and testament and is about to file objections to the admission of said last will and testament to probate; and

WHEREAS, the parties are desirous of settling their claims to the estate of the said Jane Doe, deceased, in an amicable manner, and the Second Parties are desirous of having the said First Party waive and relinquish his right to contest the said will and testament and not to file objections to its probate:

NOW, THEREFORE, IT IS HEREBY AGREED, AS FOLLOWS:

1. The First Party agrees not to contest the said last will and testament of the said Jane Doe, deceased, in any court; and the First Party hereby agrees to allow the same to be regularly and duly admitted to probate.

2. Each of the Second Parties agrees, upon receiving his share of the said estate, under said last will and testament, to pay to

⁶ Adapted from *Layer v. Layer* (1915), 184 Mich. 663, 151 N. W. 759.

the First Party a sum equal to one-eighth of the total value of the said estate, minus the debts and expenses of administration.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

Henry Roe (L.S.).

In the presence of

John Jones.

No. 129.

Agreement of compromise and settlement of claim for liquidated damages, whereunder pending action is to be discontinued.⁷

THIS AGREEMENT, made January 5, 1923, by John Doe & Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Lessor"), and the Roe Amusement Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Lessee"), WITNESSETH:

WHEREAS, in the original lease entered into between the Lessor and the Lessee, on or about July 11, 1921, and recorded in the office of the register of the county of New York on July 26, 1921, in section 6, liber 160A of Conveyances, at page 251, under block 1622A (which, by a supplemental agreement between the said parties, dated October 28, 1921, was modified in respect of the cost of construction), there is contained a provision obligating the Lessor to pay to the Lessee, as liquidated damages, the sum of one hundred (\$100) dollars for each and every week, after September 1, 1921, during which the Lessor shall fail to deliver and have the building therein demised ready for occupancy by the Lessee; and

WHEREAS, the Lessor has, by reason of the delay in the delivery of the said building, in accordance with the said lease, incurred liability to the Lessee for liquidated damages in the sum of fourteen thousand (\$14,000) dollars; and

⁷ Adapted from *Baker v. Ancient Order of Hibernians* (1918), 224 N. Y. 363, 120 N. E. 733.

WHEREAS, the Lessee has instituted an action against the Lessor, in the Supreme Court, New York County, to recover the said sum of fourteen thousand (\$14,000) dollars; and

WHEREAS, an action is now pending in said court between one Henry Koe and the said Lessor, wherein the Lessor claims to be entitled to recover from the said Henry Koe, among other damages, the sum of fourteen thousand (\$14,000) dollars, for the liability incurred by the said Lessor to the said Lessee; and

WHEREAS, the said Lessor has agreed to pay to the Lessee the sum of fourteen thousand (\$14,000) dollars, as aforesaid, in installments, as hereinafter set forth:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the Lessee may lawfully, and it is hereby authorized by the Lessor to, deduct the rents now due, and to grow due, from the Lessee to the Lessor, until the first day of September, 1923, as a part payment by the Lessor to the Lessee, on account of the said sum of fourteen thousand (\$14,000) dollars, the receipt whereof is hereby acknowledged by the Lessee.

2. That the Lessor hereby agrees to pay to the Lessee the difference between the amounts deducted, or to be deducted, as aforesaid, and the said sum of fourteen thousand (\$14,000) dollars, as follows:

(a) If the action now pending between the said Henry Koe and the Lessor shall terminate in favor of the Lessor, by the entry of judgment after a trial, then, and in that event, the Lessor shall pay such balance to the Lessee, in cash, with interest at the rate of six (6%) per cent per annum, immediately upon the termination of said action.

(b) If such action shall terminate in favor of the said Henry Koe and against the said Lessor, by the entry of judgment after a trial, then, and in that event, the Lessor shall pay to the Lessee such balance, with interest at the rate of six (6%) per cent per annum, in consecutive monthly installments of three hundred (\$300) dollars a month, commencing with the first day of the month next ensuing after such termination; and the Lessor hereby specifically agrees that the Lessee may, at its option, unless said sum or sums shall otherwise be paid by the Lessor, lawfully, and it is hereby authorized by the Lessor to, deduct out of the rents to become due, the said monthly payments, with interest, as aforesaid, at the rate of three hundred (\$300) dollars, in each and every

consecutive month, until the full balance shall have been duly paid and discharged. And it is distinctly agreed that, if the Lessor shall fail to pay any one of said installments, the entire unpaid balance of said fourteen thousand (\$14,000) dollars, with interest, then remaining unpaid, shall become due and payable, immediately upon such default.

3. The Lessee hereby agrees, contemporaneously with the execution of this agreement, to execute, or to procure its attorney to execute a stipulation, discontinuing its said action against the Lessor, without costs, and to deliver such stipulation to the Lessor.

IN WITNESS WHEREOF, each of the parties hereto has signed this instrument, by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, the day and year first above written.

John Doe & Co., Inc.,

By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Roe Amusement Co., Inc.,

By Richard Roe,
President.

(Seal)

Attest:

John V. Brown,
Secretary.

No. 130.

Agreement of compromise and settlement, whereunder fixed sum is to be paid monthly for life to one party, who agrees to assign and surrender certain instruments and to withdraw and refrain from making statements derogatory to other party and his wife.⁸

THIS AGREEMENT, made January 5, 1923, by John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Jane Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

⁸ Adapted from *Moers v. Moers* (1920), 229 N. Y. 294, 128 N. E. 102.

WHEREAS, an action to recover the sum of fifty-one thousand (\$51,000) dollars, with interest, is now pending in the Supreme Court of the State of New York, New York County, wherein the First Party is the plaintiff and the Second Party is the defendant; and

WHEREAS, divers other differences and controversies exist between the parties hereto; and

WHEREAS, the parties are desirous of compromising and settling all of their differences and controversies, including the said action:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the First Party agrees to pay to the Second Party, during the remainder of her life, the sum of three thousand (\$3,000) dollars a year, in equal monthly installments of two hundred and fifty (\$250) dollars each, on the first day of each and every month, beginning on February 1st, 1923.

2. That the Second Party covenants that, at no time, will she engage in any speculation of any kind, or nature, without first obtaining the written consent thereto of the First Party. If the Second Party shall, at any time, violate, or breach, this covenant, then, and in such event, it is agreed that the First Party shall be released of all further liability, or obligation, to make the payments provided for in the preceding paragraph hereof.

3. That the First Party further agrees to pay to the Second Party the sum of twelve thousand five hundred (\$12,500) dollars, on January 7, 1923; and, simultaneously with the receipt by the Second Party of such sum of twelve thousand five hundred (\$12,500) dollars, the Second Party agrees to assign and deliver to the First Party the insurance policy heretofore issued upon the life of the First Party by the Koe Life Insurance Co., and which heretofore was assigned by the First Party to the Second Party.

4. That, contemporaneously with the execution and delivery of such assignment and life insurance policy, the Second Party agrees:

(a) To endorse and deliver to the First Party, for his own use, a certain check for the sum of one thousand (\$1,000) dollars, dated June 14, 1922, which was made by the Koe Life Insurance Co. to the joint order of the First Party and the Second Party.

(b) To sign and deliver to the First Party a letter, retracting all derogatory statements of every kind and nature whatsoever,

heretofore made by the Second Party, in respect of the First Party, or of the First Party's wife, Jane Doe.

(c) To covenant, in such letter of retraction, that the Second Party will not, at any time or times, utter, make or publish any similar derogatory statements, or any other statements, which may, directly or indirectly, reflect upon the good faith, honor, or character of the First Party, or of his said wife.

(d) To deliver to the First Party the instrument, dated August 5, 1922, which purports to be the last will and testament of the First Party.

(e) To deliver to the First Party all of the books, papers and documents of the First Party, including all letters heretofore sent by the First Party to the Second Party, and all other property of the First Party now in the possession, or under the control, of the Second Party.

5. That the action instituted by the First Party against the Second Party, which now is pending undetermined in the Supreme Court of the State of New York, New York County, shall be forthwith discontinued, without costs to either party as against the other.

6. That the First Party hereby releases the Second Party, and the Second Party hereby releases the First Party, of and from any and all claims, demands and causes of action, not arising out of, or under, this agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Jane Roe (L.S.).

In the presence of

John Jones.

No. 131.

Agreement of creditor to pay debtor's debt to another creditor.⁹

AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at

⁹ Adapted from *Clark v. Howard* (1896), 150 N. Y. 233, 44 N. E. 1101.

No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party is justly indebted to the Second Party in the sum of nine thousand (\$9,000) dollars, of which seven thousand (\$7,000) dollars is evidenced by notes made by the First Party and delivered to the Second Party, for merchandise sold and delivered, and six hundred (\$600) dollars thereof is for cash loaned, and fourteen hundred (\$1,400) dollars thereof is for merchandise sold and delivered, and now past due; and

WHEREAS, the First Party, in order to pay the said indebtedness to the Second Party, has this day sold, assigned and delivered to the Second Party all of his stock of jewelry, books of account, bills receivable and fixtures of and in the business conducted by the First Party, at No. 11½ Broadway, Borough of Manhattan, New York City, as shown by a bill of sale this day executed and delivered by the First Party to the Second Party; and

WHEREAS, the First Party is justly indebted to Henry Koe in the sum of twenty-eight hundred (\$2,800) dollars for moneys loaned; and

WHEREAS, in consideration of the execution and delivery of the said bill of sale by the First Party to the Second Party, the Second Party has agreed to assume and discharge the indebtedness of the First Party to the said Henry Koe:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the Second Party shall, in behalf of the First Party, pay to the said Henry Koe the sum of twenty-eight hundred (\$2,800) dollars, now due for moneys heretofore loaned by the said Henry Koe to the First Party.

2. That the Second Party shall indemnify and save harmless the First Party against the said claim of the said Henry Koe.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

No. 132.

Agreement between lender and merchant for loaning money upon the latter's merchandise accounts.¹⁰

AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Borrower"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Lender"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. From and after the date of this agreement, the Borrower shall assign and deliver to the Lender accounts receivable for, and reports of, all sales of merchandise made by the Borrower, within three (3) days after the shipment of such merchandise. Said accounts receivable, and the assignment thereof, shall include, or be accompanied by, such representations, guarantees and agreements as the Lender shall, from time to time, demand.

2. The Lender shall loan, or advance, to the Borrower, on the security of said accounts receivable, eighty (80%) per cent of the net face value of the total current accounts receivable (commissions, trade and cash discounts deducted); but the Lender shall be under no obligation to loan an amount greater than fifty thousand (\$50,000) dollars outstanding at any one time.

3. The term "current accounts receivable," as used herein, shall include all the assigned accounts receivable, which shall have been approved by the Lender and remain open and unpaid, or otherwise uncanceled, and which, subsequent to their receipt by the Lender are not withdrawn from the current accounts receivable. All accounts in the current accounts receivable shall be subject to approval by the Lender in respect of the solvency of the purchaser and the amount of credit extended, or otherwise; and the Lender may, at any time, withdraw from the current accounts receivable any account previously included therein, and, thereupon, such withdrawn account shall not thereafter be included in the current accounts receivable.

4. Nothing herein contained shall alter, or affect, the obligation of the Borrower to assign and deliver all of his accounts re-

¹⁰ Adapted from *Presser v. Central Trust & Savings Co.* (1922), 232 N. Y. 573, 134 N. E. 577.

ceivable to the Lender, including not only the current accounts receivable, but, also, the accounts receivable not approved by the Lender; and such accounts receivable as may be withdrawn by the Lender from the current accounts receivable shall be held by the Lender as collateral for the loan, and shall be collected by him.

5. Should the amount of the loan, or loans, at any time exceed eighty (80%) per cent of the net face value of the current accounts receivable as herein defined, the Borrower shall immediately reduce the loan, either by the payment of the excess in cash, or by the assignment of additional accounts receivable increase the current accounts receivable held by the Lender, so that the amount of such loan, or loans, shall not exceed eighty (80%) per cent of the net face value of the current accounts receivable.

6. The Borrower shall:

(a) Make and deliver to the Lender his promissory note, or notes, payable on demand, for the amount of credit granted by the Lender, and such note, or notes, shall contain a reference to this agreement, and shall be in the form set forth in "Exhibit A" hereto annexed, and hereby made a part hereof, or in such other form that the Lender may require.

(b) Deliver to the Lender railway, or other, receipts of the actual shipment, or delivery, of the merchandise described in such accounts receivable, and, when required so to do, shall furnish to the Lender satisfactory evidence of the actual receipt of the merchandise by the purchaser.

(c) Immediately notify the Lender of any revocation, or return of goods, setoff, or counterclaim, made, or deduction, or discount, claimed by any purchaser against any of said accounts receivable, or the merchandise referred to therein.

(d) Immediately deliver to the Lender all checks, notes, moneys, security, or collateral of any kind, which may be received by the Borrower in payment, or on account, of, or in connection with, any of the assigned accounts receivable, and the same shall be the property of the Lender, and the Lender, or his assigns, shall have the right to endorse the name of the Borrower, or any trade name under which he transacts business, on any and all commercial paper received by the Lender in payment, or on account, of the assigned accounts receivable.

(e) Immediately communicate to the Lender any information received by the Borrower, relating to the financial status of, or to

any suit or proceeding against, any debtor under any of said accounts receivable.

(f) Permit the Lender, or his representative, to audit, from time to time, without notice, the books kept by the Borrower, and to examine, at any time, all of the books of account and papers kept by the Borrower, and all letters and reports received, relating to sales and dealings with his customers; and the Borrower shall deliver to the Lender, at any time, on request, statements and balance sheets, showing the condition of his business.

7. Any money which shall become due hereunder from the Borrower to the Lender, shall be added to, and be a part of, the loan; and the lien of the Lender on the accounts receivable shall include all moneys which shall become due to the Lender from the Borrower, as well as the amount of the loan and interest thereon, and such lien shall extend to all the assigned accounts receivable.

8. (a) The Lender shall have full power to re-assign the accounts receivable; and said accounts receivable shall be, and remain, the sole property of the Lender, or his assigns, with unlimited authority to sell, assign, pledge, re-pledge, collect, compromise, extend or convert the same into bills receivable, with or without security; and the Lender, or his assigns, either jointly or severally, may institute and prosecute legal proceedings for the collection of the same, or do anything else in connection therewith, which the Borrower might do, had such accounts not been assigned, and this, without extending the time of payment of any loan.

(b) The Borrower shall repay to the Lender any expense incurred by him, including counsel fees, in any proceedings instituted by, or prosecuted against, him, or his assigns, or otherwise, in the collection of the loan, or of the accounts receivable, or for the protection, or preservation, of his, or their, rights in the premises.

9. The Borrower shall pay the amount of the loan made by the Lender, with interest thereon, whenever the same, by its terms, becomes due, without regard to the condition of the accounts receivable held as security for said loan; and the Borrower waives any defense, in law, or in equity, growing out of the condition, or management, of the accounts receivable so assigned.

10. The Borrower shall pay to the Lender interest at the rate of six (6%) per cent per annum on daily loan balances, and a commission to be agreed upon.

11. This agreement shall commence on the date hereof, and may be terminated as to the obligation to assign accounts receivable, and to make advances on the security thereof, at any time, on sixty (60) days' notice in writing by one party to the other.

12. Each and every of the agreements herein contained is declared to be of the essence of this contract, and, in the event of the violation of any of them by either party, the other party may immediately terminate this agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

"Exhibit A"

New York City,

\$.....

On demand, for value received, John Doe promises to pay to Richard Roe, or order, at his office, No. 11½ Broadway, Borough of Manhattan, New York City, dollars, with interest at the rate of six per cent per annum, said sum to be secured by the assignment to Richard Roe, or order, as collateral security for the payment of this and of all previous and subsequent obligations of John Doe, due, or to become due, of certain accounts receivable, debts, claims and demands created in favor of, and belonging to, John Doe, at the time of such assignment, and all moneys due, or to grow due thereon, together with all the right, title and interest of John Doe in and to the merchandise for the sale and delivery of which said accounts arose; with the right on the part of the said Richard Roe and his assigns, from time to time, to demand such additional security as he, or they, may deem necessary, and, on failure to comply with any such demand, this obligation shall be deemed to be due and payable forthwith, without notice or demand; and with the further right to accept and substitute other assigned accounts subsequent to the date hereof, in lieu of accounts this day assigned, and to hold such other accounts as collateral to this loan, with the same rights and powers and under the same conditions as the accounts, and each of them, assigned and delivered herewith; with full power and authority to said Richard Roe and his assigns to sell and deliver

any and all of said collateral security, at public, or private, sale, at the option of the said Richard Roe and his assigns, without demand, advertisement or notice, and with the right on the part of the said Richard Roe and his assigns to be the purchaser thereof at such sale, free and discharged of any equity of redemption, and, after deducting all costs and expenses incident to said sale and delivery, to apply the net proceeds to the payment of such just claims and obligations as may, at the time of said sale, be owing from John Doe to said Richard Roe, or his assigns, whether due, or to become due, and the undersigned agrees to remain and continue liable for any unpaid balance remaining.

This note is given in connection with a certain agreement between John Doe and Richard Roe, dated January 5, 1923, and is to be interpreted in harmony with said agreement.

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No. 133.

Agreement for building loan.¹¹

AGREEMENT, made this 5th day of January, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, hereinafter referred to as the Borrower, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, hereinafter referred to as the Lender.

WHEREAS, the borrower has applied to the lender for a loan of five hundred thousand (\$500,000) dollars, to be evidenced by the bond of the borrower, duly executed and acknowledged for the payment on demand made after the 5th day of January, 1927, of the said sum of five hundred thousand (\$500,000) dollars, or so much thereof as shall at any time be advanced by the holder of the said bond, with interest upon each amount so advanced, from the day when such advance was made to the date of payment, at the rate of six (6%) per centum per annum; and

WHEREAS, said bond is to be secured by a first mortgage on the premises described, as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, New York City, with the

¹¹ Adapted from the form prepared and used by the Lawyers Title & Trust Company, New York City.

building and improvements thereon to be erected, and more particularly bounded and described, as follows:

BEGINNING * * *

and

WHEREAS, the borrower covenants to erect on said premises the following described building in accordance with the plans therefor filed in and duly approved by the Department of Buildings of the City of New York, and, if such building be affected by the Tenement House Law, the Tenement House Department of the City of New York; and the said plans and specifications for said building are to be first submitted to and approved by the lender; and

WHEREAS, the building which the borrower covenants to erect shall be a ten (10) story and basement steel fire-proof office building, containing substantially two million (2,000,000) cubic feet, and which shall be erected in accordance with the plans and specifications filed, as aforesaid, and shall cost not less than one million (\$1,000,000) dollars:

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

FIRST: That said mortgage is to be duly executed and acknowledged by all persons necessary to make it a valid first lien on said premises for the advances to be made, and the said bond and mortgage are to be in form approved by the lender, and it is expressly understood and agreed that all gas fixtures, bath tubs, dressers, wardrobes, furnaces, ranges, mantels, grates and similar fixtures and articles, and each and every fixture and improvement, attached to or placed in the said building, to be used in connection therewith, shall form part of the mortgaged premises, to be covered by and subject to the lien of the mortgage given to secure the advances herein provided for. The said bond and mortgage are to be delivered on the 5th day of May, 1923, at 10 A.M., at the office of Doe Title and Trust Company, No. 16 Broadway, Borough of Manhattan, City of New York.

SECOND: That the lender may deduct from any payment to be made under this agreement any amount necessary for the payment of any expenses relating to the examination of the title to the said premises or incurred in the procuring and making of the said loan, or in the payment of any incumbrance, tax, assessment or other charge or lien upon the said premises existing at any time,

whether before or after the making of said loan, and apply such amounts in making said payments, and all sums so applied shall be deemed advances under this agreement and secured by said bond and mortgage.

THIRD: The advances to be made upon the said mortgage, and to be secured by said premises and the buildings and improvements, including all fixtures, to be thereon erected, shall be as the lender shall determine, but substantially in accordance with the following schedule:

(a) Thirty-three and one-third ($33\frac{1}{3}\%$) per cent thereof upon the signing of this contract;

(b) Thirty-three and one-third ($33\frac{1}{3}\%$) per cent thereof when the said building shall have been constructed and erected to the sixth story thereof, upon Koe & Koe, architects, certifying that the building, as constructed to such sixth story, complies with the plans and specifications aforesaid.

(c) Thirty-three and one-third ($33\frac{1}{3}\%$) per cent thereof when the said building shall have been constructed and erected to the tenth story thereof, upon Koe & Koe, architects, certifying that the building, as constructed to such tenth story, complies with the plans and specifications aforesaid.

FOURTH: The lender may, at his option, upon the satisfactory completion of the said building, loan to the borrower a sum to be fixed by the lender, in addition to the amount herein agreed to be advanced as a building loan, which said additional sum, together with the amount of this building loan, shall then constitute a single loan upon said premises, to be secured by a mortgage, to be then executed and recorded, to run for such length of time and at such rate of interest as the lender may determine.

FIFTH: The lender agrees to make said loan and the borrower agrees to take said loan upon the terms and conditions above set forth, and also as follows:

I. That the borrower at the time fixed for the delivery of the mortgage shall pay the charges for the examination of the title to the said premises, surveys and drawing of papers, and shall also pay the recording fees..

II. That the fees paid to the lender for the making of this loan, are in accordance with the number of payments and inspections to be made as per the foregoing schedule. If any additional payments or inspections are requested by the borrower, other than

provided for in the foregoing schedule, a charge of one hundred (\$100) dollars for each said inspection shall be made as a payment for the additional inspection and continuation of searches, etc., but the lender is under no obligation to make any additional inspection or payment and the making of same shall be entirely at the option of said lender.

III. That the lender may at any time release portions of the mortgaged premises upon receiving what, in the opinion of the lender, is a proper payment on account of the mortgage debt.

IV. That the lender may require five days' notice in writing from the borrower before an advance shall be called for.

V. That no advance shall be due unless, in the judgment of the lender, all work usually done at the stage of construction when the advance is made payable be done in a good and workmanlike manner, and all material and fixtures usually furnished and installed at that time are furnished and installed, but the lender may advance parts or the whole of any installments before they become due, if the lender believes it advisable so to do, and all such advances or payments shall be deemed to have been made in pursuance of this agreement. A receipt for any advance may be made by any one of the parties constituting the borrower, if more than one person, with the same effect as if signed by all of such persons.

VI. That the lender may cause said loan to be made by some other person or corporation. That the bond and mortgage shall then run to said person or corporation. That the provisions of this agreement shall apply to such bond and mortgage, and, if the loan be so made, it shall be deemed a compliance by the lender with this agreement. That the lender may assign said bond and mortgage and cause the assignee to make any advances not made at the time of the assignment, and all the provisions of this agreement shall continue to apply to said loan and bond and mortgage.

VII. That the lender or any holder of said bond and mortgage may extend the payment of the principal secured by said bond and mortgage, and any extension so granted shall be deemed made in pursuance of this agreement and not to be a modification thereof.

VIII. That the lender or any holder of said bond and mortgage may employ a watchman to protect the buildings from depredation or injury, and the expense of so doing shall be deemed an advance by the lender, and secured by said bond and mortgage..

IX. That if the construction of said buildings be at any time discontinued or not carried on with reasonable despatch in the judgment of the lender, said lender or any holder of said bond and mortgage may purchase materials and employ workmen to protect said buildings so that the same will not suffer from depreciation or the weather, or to complete said buildings, so that they may be used for the purposes for which they are designed, under the said plans and specifications.

X. That all the sums so paid or expended shall be deemed advances to the borrower and secured by said bond and mortgage, and may be applied, at the option of said lender or any holder of said bond and mortgage, to any advances thereafter becoming due.

XI. That in the event of the death of the borrower while still holding title to the premises hereinbefore described, the lender will, in case the work upon the said buildings is continued as provided in this agreement, continue to make advances under this agreement and subject to all of its terms and conditions to the borrower's executors or administrators; and all sums so advanced by the lender shall be deemed advances under this agreement, as if made to the borrower in his lifetime, and shall be secured by said bond and mortgage.

XII. That in the event of the borrower's parting with or being in any way, except by death, deprived of his title to the premises described in this agreement, the lender may at his option continue to make advances under this agreement, subject to all its terms and conditions, to such person or persons or corporations as may succeed to the borrower's title; and all sums so advanced by the lender shall be deemed advances under this agreement, and shall be secured by said bond and mortgage.

SIXTH: The borrower covenants and agrees not to do any act or thing prohibited by the terms of this agreement, and it is expressly agreed that in any of the following events all obligations on the part of the lender to make said loan or to make any further advance shall, if the lender so elect, cease and terminate, and the said bond and mortgage shall at the option of the holder thereof become immediately due and payable, but the lender may make advances without becoming liable to make any other advances.

I. If the mortgage offered by the borrower shall not give to the lender a lien for the indebtedness to be secured thereby on the premises above set forth, satisfactory to the attorney of the lender.

II. If the loan is to be advanced in more than one payment, and any payment be requested, and the attorney of the lender shall not approve of the payment requested because of some act, incumbrance or question arising after the making of the preceding payment.

III. If the borrower assigns this contract or said advances or any interest therein, or if said premises be conveyed or encumbered in any way without the consent of the lender.

IV. If the improvements on said premises or any building which may be erected upon said premises shall materially encroach upon the street or upon adjoining property.

V. If the borrower does not take the loan or the advances within thirty days after they are made payable, or in case where the payment of advances is dependent upon the erection of a building, the building is not fully enclosed within two months from date, or fully completed and ready for occupancy within five months from date.

VI. If the improvements on said premises be, in the judgment of the lender, materially injured or destroyed by fire or otherwise.

VII. If the makers of said bond and mortgage shall fail to comply with any of the covenants therein contained.

VIII. If any materials, fixtures or articles used in the construction of the building or appurtenant thereto, be not purchased so that the ownership thereof will vest in the owner of the said premises free from incumbrance, on delivery at the premises.

IX. If the borrower does not erect said building in accordance with plans and specifications satisfactory to the lender and plans that have been approved by the Department of Buildings of the City of New York, and if said building be affected by the Tenement House Law, by the Tenement House Department of the City of New York.

X. If the owners of said premises do not permit the lender, or a representative of the lender, to enter upon said premises and inspect the building thereon at all reasonable times.

XI. If the construction of said building be at any time discontinued or not carried on with reasonable despatch in the judgment of the lender.

XII. If, by reason of the death of any owner of said premises, the heirs, devisees or legal representatives of such owner shall permit or allow said construction of the building to be discontinued for a period of thirty days.

XIII. If the borrower make any conditional purchases of, or execute any chattel mortgage on any materials, fixtures or articles used in the construction of the building or appurtenant thereto.

XIV. If the borrower fail to comply with any requirement of any Department of the City of New York, within thirty days after notice in writing of such requirement shall have been given to said borrower by the lender.

SEVENTH: And it is mutually understood and agreed by and between the parties hereto on behalf of themselves and their respective legal representatives that the bond and mortgage contemplated to be executed, acknowledged and delivered pursuant to this agreement shall be made subject to all the conditions, stipulations, agreements and covenants contained in such agreement, to the same extent and effect as they would be if fully set forth and made part of such bond and mortgage; and it is further expressly understood and agreed that, if the borrower shall fail to keep, observe or perform any of the stipulations or covenants contained in said bond and mortgage, or in this agreement, that, at the option of the holder of said bond and mortgage, the amount secured thereby shall become at once due and payable, anything to the contrary notwithstanding.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this agreement the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

No. 134.

Agreement for loan to member of a joint adventure by trust company, which is to receive and disburse the moneys earned by the joint adventure.¹²

THIS AGREEMENT, made January 5, 1923, by John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), Richard Roe, residing at No. 371½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), the Doe Corporation, a corporation,

¹² Adapted from *Evans v. Guaranty Trust Co.* (1919), 187 App. Div. 30, 175 N. Y. Supp. 118.

duly organized under the laws of the State of New York, and having an office at No. 57½ Broadway, Borough of Manhattan, New York City (herein called the "Corporation"), and the Koe Trust Company, a corporation, duly organized under the laws of the State of New York, and having an office at No. 57½ Broadway, Borough of Manhattan, New York City (herein called the "Trust Company"), WITNESSETH:

WHEREAS, the First Party has secured a contract from the United States Government, dated December 16, 1922, for assembling, loading and packing one million complete rounds of three inch shell; and

WHEREAS, for the purpose of fulfilling said contract, the First Party has entered into a contract with the Corporation, dated January 5, 1923, for assembling, loading and packing the said one million complete rounds of three inch shell; and

WHEREAS, the First and Second Parties are owners of the entire capital stock of the Corporation now issued and outstanding; and

WHEREAS, the First and Second Parties and the Corporation have requested the Trust Company to loan to the Corporation the sum of four hundred thousand (\$400,000) dollars, and to receive a note in said amount, executed by the Corporation to the Trust Company, bearing interest at the rate of six (6%) per cent per annum, and endorsed and guaranteed by the First and Second Parties:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. The Trust Company shall forthwith loan to the Corporation the sum of four hundred thousand (\$400,000) dollars, for a period of four (4) months from the date hereof, and the Corporation shall execute and deliver to the Trust Company its negotiable promissory note, in the amount of four hundred thousand (\$400,000) dollars, bearing even date herewith, and payable at the office of the Trust Company, four (4) months from the date hereof, with interest at the rate of six (6%) per cent per annum, which note, prior to the delivery thereof, shall be endorsed and guaranteed by the First and Second Parties.

2. The First Party shall, immediately upon receipt thereof, deposit with the Trust Company all payments received by him from the United States Government, its officers, agents or assigns, under, or by reason of, said contract dated December 16, 1922, for assem-

bling, loading and packing one million complete rounds of three inch shell.

3. Said sum, or sums, so deposited, shall be received and held in trust, however, by the Trust Company, for the following uses and purposes:

(a) That seventy-five (75%) per cent of each and every payment received by the Trust Company shall, immediately upon receipt thereof by the Trust Company, be paid to the Corporation, its successors and assigns.

(b) That the balance of twenty-five (25%) per cent of each and every payment received by the Trust Company, up to an amount equal to the amount of principal and accrued interest due and payable to the Trust Company from the Corporation on said note, or any extensions or renewals thereof, shall be set aside and held by the Trust Company, as security for the payment of said loan and said note, or any extensions and renewals thereof; and that, after such amount shall have been so set aside and held by the Trust Company, the remainder of said balance of twenty-five (25%) per cent of each and every payment received by the Trust Company shall thereafter be disbursed by the Trust Company, as follows: fifty (50%) per cent thereof to the First Party, and fifty (50%) per cent thereof to the Second Party, their heirs, executors, administrators and assigns, respectively.

(c) That at the date of maturity of said note, or of any extension or renewals thereof, the Trust Company may apply the sums held by it hereunder as security for said note, to the payment thereof.

4. That the First Party shall not assign, transfer, or set over, to any person, firm or corporation, his right, or interest, under said contract with the United States Government, dated December 16, 1922, without first obtaining the written consent thereto of the other parties to this agreement.

5. That, subject to the express provision contained in paragraph "4" hereof, this agreement shall bind, apply and extend to the executors, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the First and Second Parties have hereunto set their hands and seals, and the Corporation and the Trust Company have caused this instrument to be executed by their respective officers, thereunto duly authorized, and their respective

corporate seals to be affixed, attested by their respective Secretaries, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of
John Jones.

Doe Corporation,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Koe Trust Company,
By Henry Koe,
President.

(Seal)

Attest:

Thomas Brown,
Secretary.

No. 135.

Agreement reviving debt barred by statute of limitations.¹³

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing in Larchmont, New York (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party, on or about August 1, 1912, sold and delivered to the Second Party certain goods, wares and merchandise, consisting of a suit of clothes, of the agreed and reasonable value of fifty (\$50) dollars; and

WHEREAS, no part of such sum has been paid by the Second Party:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. The Second Party hereby acknowledges that he is indebted to the First Party in the sum of fifty (\$50) dollars, with interest thereon from August 1, 1912, for goods, wares and merchandise,

¹³ Cf. *Hartley v. Requa* (1896), 17 Misc. 74, 39 N. Y. Supp. 846.

consisting of a suit of clothes, sold and delivered by the First Party to the Second Party on or about August 1, 1912.

2. The Second Party hereby agrees to pay said sum of fifty (\$50) dollars, with six (6%) per cent interest thereon, to the First Party, on or before March 5, 1923.

3. The First Party agrees, for a period of two months from the date hereof, not to institute any suit, or action, against the Second Party, to recover the said sum of fifty (\$50) dollars and interest.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of
John Jones.

No. 136.

Agreement submitting controversy to arbitrator for hearing and decision—official form.¹⁴

Arbitration Society of America

.....
John Doe

—and—

Richard Roe

.....
Submission to Arbitration.

A claim, demand, dispute, controversy, difference or misunderstanding between the undersigned having arisen and relating to a subject matter the nature of which, briefly stated, is as follows:

Whether the contract of employment between the aforesaid John Doe and Richard Roe, dated January 5, 1922, was breached or violated by the aforesaid Richard Roe on or about December 22, 1922, by the failure of the said Richard Roe to perform his duties under such contract of employment,

We do hereby voluntarily submit the same and all matters concerning the same to Henry Koe, as Arbitrator of the Arbitration Society of America, Inc., for hearing and decision pursuant to the By-Laws of the Arbitration Society of America, Inc., and the Rules adopted by the said Society or by its Committee on Arbitra-

¹⁴ Adapted from the form prepared and used by the Arbitration Society of America, in New York City.

tion, and pursuant to Chapter 275 of the Laws of 1920 of the State of New York, and Chapter 72 of the Consolidated Laws; and we agree to stand to, abide by and perform the decision, award, order, orders and judgment that may therein and thereupon be made under, pursuant to and by virtue of, this submission.

We do further agree that a judgment of the Supreme Court of the State of New York may be entered in any county in the State of New York thereon.

Dated, New York, January 5th, 1923.

John Doe (L.S.).

Richard Roe (L.S.).

No. 137.

General release.¹⁵

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, in consideration of one (\$1) dollar, lawful money of the United States of America, heretofore paid to me by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, do hereby remise, release and forever discharge the said Richard Roe, his heirs, executors, and administrators, of, and from, all, and all manner of, action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which against the said Richard Roe I, the said John Doe, ever had, now have, or which my heirs, executors or administrators hereafter can, or may, have, by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this release.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones.

¹⁵ Cf. *Gray v. McCune* (1854), 23 Pa. St. 447.

No. 138.

Mutual releases between an individual and an administratrix of an estate acting in her individual and representative capacity.¹⁶

KNOW ALL MEN, that, in consideration of the mutual releases herein contained, and of certain other considerations, the receipt of which is hereby severally acknowledged, all as set forth in an order of the Surrogates' Court of New York County, dated January 5, 1923, entered and filed in a certain proceeding, entitled "In Matter of the Estate of John Doe, deceased," and in pursuance of the plan of settlement and compromise authorized by said order, we, Henry Koe, individually, and Jane Doe, individually and as administratrix of the Estate of John Doe, deceased, hereby mutually release and discharge one the other from all claims, demands, causes of action of every kind whatsoever, at law or in equity, arising out of any act, transaction, matter or thing down to the date of these presents, that is to say:

(a) I, the said Henry Koe, hereby release and discharge the said Jane Doe, individually and as administratrix, as aforesaid, from each and every claim, demand and cause of action whatsoever, whether at law or in equity, which I now have, or ever had, or which I, or my heirs, executors, administrators, or assigns, ever can have against the said Jane Doe, individually, or against John Doe, or his estate, or the said Jane Doe, as administratrix thereof, arising out of any act, transaction, matter or thing down to the date of these presents; and

(b) I, the said Jane Doe, individually and as administratrix as aforesaid, do hereby release and discharge the said Henry Koe, from each and every claim, demand, and cause of action whatsoever, at law or in equity, which I individually now have, or ever had, or which my heirs, executors, administrators or assigns ever can have against the said Henry Koe, and each and every claim, demand, and cause of action whatsoever, at law or in equity, which the said John Doe ever had, or which I, as his administratrix, now have, or which I, or my successor, or successors, as administrator, or administra-

¹⁶ Adapted from *Gould v. Fleitmann* (1920), 230 N. Y. 569, 130 N. E. 897.

trix, ever can have against the said Henry Koe, arising out of any act, transaction, matter or thing, down to the date of these presents.

IN WITNESS WHEREOF, the said Henry Koe, and the said Jane Doe, individually and as administratrix of said John Doe, deceased, have hereunto, respectively, set their hands and seals, this 5th day of January, 1923.

Henry Koe (L.S.).

Jane Doe (L.S.),

Individually and as Administratrix of
the Estate of John Doe, Deceased.

In the presence of
John Jones.

No. 139.

Plan and agreement for re-adjustment of indebtedness of two corporations, whereunder mortgage and debenture bonds are to be exchanged for new debentures, guaranteed as to principal and interest by another corporation, with notice of adoption of plan.¹⁷

NOTICE.

To the Holders of Certificates of Deposit Issued by Koe & Company for

Doe Starch Company Five Per Cent Debenture Bonds;

Doe Starch Manufacturing Company Six Per Cent Mortgage Bonds.

NOTICE IS HEREBY GIVEN to the depositors, under the Protective Agreement, dated the 22nd day of December, 1922, entered into between the holders of the Debenture Five Per Cent Twenty-five Year Sinking Fund Gold Bonds of Doe Starch Company and holders of the First Mortgage Six Per Cent Thirty Year Gold Bonds of Doe Starch Manufacturing Company and the undersigned Committee, that the Committee appointed by such Protective Agreement have prepared, approved and adopted a Plan and Agreement for the Re-adjustment of the Indebtedness of the Doe Starch Company and that a copy of such Plan and Agreement has been

¹⁷ Adapted from *Corn Products Refining Co. v. U. S.* (1919), 249 U. S. 621, 39 Sup. Ct. Rep. 291, 63 Law ed. 805. Cf. *Northern Pacific R. Co. v. Boyd* (1902), 228 U. S. 482, 33 Sup. Ct. Rep. 554, 57 Law ed. 931; *Gilfillan v. Union Canal Co.* (1885), 109 U. S. 401, 3 Sup. Ct. Rep. 304, 27 Law ed. 977; *Parker v. Grant Locomotive Works* (1885), 40 N. J. Eq. 114, 3 Atl. 162.

filed with Messrs. Koe & Company, No. 11½ Broadway, New York City, the depositary named in said agreement.

Dated, New York, January 5, 1923.

John Doe,
Richard Roe,
Henry Koe,
Committee.

John Smith,
Secretary.

PLAN AND AGREEMENT.

THIS AGREEMENT, made this 5th day of January, 1923, by the Doe Starch Company, a corporation, duly organized under the laws of the State of New Jersey, and having its principal office at No. 37½ Main Street, Jersey City, New Jersey (herein called the "Starch Company"), party of the first part, John Doe, Richard Roe and Henry Koe, as a Committee of certain Bondholders of the Starch Company and Doe Starch Manufacturing Company (herein called the "Starch Manufacturing Company"), a corporation, duly organized under the laws of the State of New Jersey, and having its principal office at No. 11½ Main Street, Jersey City, New Jersey (herein called the "Committee"), party of the second part, and the Doe Products Refining Co., a corporation, duly organized under the laws of the State of New Jersey, and having its principal office at No. 11½ Main Street, Jersey City, New Jersey (herein called the "Refining Company"), party of the third part, WITNESSETH:

WHEREAS, certain holders of the Debenture Five Per Cent Twenty-five Year Sinking Fund Gold Bonds of the Doe Starch Company and of the First Mortgage Six Per Cent Thirty Year Gold Bonds of the Doe Starch Manufacturing Company have, by an agreement dated the 22nd day of December, 1922 (herein called the "Protective Agreement"), conveyed and vested the title to the same with the Committee, with authority, for the benefit of the said bondholders, to sell, or to exchange, said bonds, in such manner as they may see fit, for the purpose of better adjusting the present indebtedness of the said Doe Starch Company and Doe Starch Manufacturing Company; and

WHEREAS, negotiations have been carried on by the parties to this agreement, for the purpose of better adjusting the present indebtedness of the said Starch Company and Starch Manufacturing Company:

NOW, THEREFORE, THE PARTIES TO THIS AGREEMENT, AND EACH OF THEM, COVENANT AND AGREE, AS FOLLOWS:

1. (a) The Starch Company agrees that it will issue and deliver to the Doe Loan & Trust Company (herein called the "Trust Company"), for exchange, as hereinafter provided, its Five Per Cent Twenty Year Debenture Coupon Gold Bonds (herein called the "New Debentures"), to the amount of five million, two hundred and eighty-one thousand (\$5,281,000) dollars, which New Debentures shall bear the date of July 1, 1923, with interest payable, semi-annually, on the first day of January and the first day of July in each year, beginning with the year 1924, until maturity, with interest coupon payable January 1, 1924, attached (a copy of the form of said New Debentures and of the coupons are attached hereto, marked "A," and made a part hereof). That such New Debentures, before being issued, shall be authenticated by the Trust Company executing the certificates thereon endorsed; the amount of these New Debentures being equal to five-sixths of the total amount at present outstanding of the Debenture Five Per Cent Twenty-five Year Sinking Fund Gold Bonds of the Starch Company, bearing date July 1, 1900 (herein called "Old Debentures"), and of the Doe Starch Manufacturing Company's First Mortgage Six Per Cent Thirty Year Gold Bonds (herein called the "Mortgage Bonds").

(b) The Starch Company further agrees that it will exchange said New Debentures for Old Debentures and Mortgage Bonds, in accordance with the terms of this contract, and will deliver such New Debentures to the Trust Company, for this purpose.

2. (a) The Refining Company agrees and covenants that, upon the presentation to it, at its office at No. 11½ Main Street, Jersey City, New Jersey; of all, or any, of said New Debentures, in substantially the form set out, it will guarantee the payment of the principal and interest of, and upon, each and every one of such New Debentures, when due, and will endorse its said guarantee upon each of said New Debentures so presented, in the following terms, to wit:

FOR VALUE RECEIVED, the Doe Products Refining Company hereby guarantees the punctual payment of the principal and interest of the within Debenture Bond, at the time, and in the manner, therein specified, and covenants, upon default of payment of any part thereof by the obligor, to pay the said interest of the

within Debenture Bond, as the same shall become due, and, also, the principal becoming due by the declaration of the Trustee as therein mentioned, on demand of the holder thereof.

IN WITNESS WHEREOF, the Doe Products Refining Company has caused its corporate seal to be hereunto affixed and attested, and this instrument to be executed.

(b) Upon the exchange of the Old Debentures deposited with the Committee, under the terms of the Protective Agreement, for the New Debentures, the Refining Company further agrees to pay, upon each and every Old Debenture as exchanged, in addition to the interest already paid, the sum of twenty-five (\$25) dollars, in full payment of the interest accruing upon each of said Old Debentures to July 1, 1923; and, upon the exchange of the Mortgage Bonds so deposited, the Refining Company further agrees, upon each and every Mortgage Bond so exchanged, in addition to the interest already paid, to pay the sum of forty (\$40) dollars, in full payment of the interest accruing upon each of said Mortgage Bonds to July 1, 1923. Such interest payments upon said Old Debentures and said Mortgage Bonds shall be made by the Refining Company executing its check to the Committee, as Trustee, for the Bondholders, and delivering the same to the Trust Company for this purpose.

(c) As consideration for the above guarantee and payment, there shall be given to the Refining Company, for each five New Debentures so guaranteed by the Refining Company, and issued in exchange for the Old Debentures and Mortgage Bonds, alternately, one Old Debenture, or one Mortgage Bond, which shall have been received in exchange; and the Trust Company is hereby authorized to assign, convey and deliver the same to the Refining Company. But Old Debentures and Mortgage Bonds so assigned, conveyed and delivered to the Refining Company shall not be subject to further exchange for New Debentures.

3. The Committee agrees that, on, or before, the 1st day of July, 1923, they will assign, convey and deliver to the Trust Company, for the purpose of exchanging the same for New Debentures, in accordance with the terms of this agreement, all of the Old Debentures and Mortgage Bonds, which have been deposited with them, under the terms of the Protective Agreement, and which now are in their possession, or that may come into their possession in the future. Inasmuch as, however, the Bondholders depositing

their bonds with the Committee, under the terms of the Protective Agreement, have the right to dissent from the Committee's Plan and Agreement for the adjustment of the present indebtedness, within thirty days from the first publication of the notice of the preparation and filing of such Plan and Agreement; and may, within ten days after filing such dissent, withdraw the bonds so deposited with them, and, inasmuch as the said right of the Bondholders to withdraw their bonds has not yet expired, it is agreed that the Committee executes this present agreement subject to the terms of the said Protective Agreement, and, further, that none of the Old Debentures or Mortgage Bonds shall be exchanged for New Debentures as herein provided, until the period within which the said Bondholders may withdraw their bonds, under the terms of the said Protective Agreement, shall have expired.

4. (a) When the New Debentures issued by the Starch Company and guaranteed by the Refining Company as hereinabove provided, shall have been delivered to the Trust Company, the latter, upon delivery to it of the Old Debentures and Mortgage Bonds by the Committee for the account of the Starch Company, shall deliver, in exchange for the same, New Debentures equal at par to five-sixths of the par value of the surrendered securities, and, in addition thereto, checks of the Refining Company for the interest accruing to July 1, 1923, upon each of said Old Debentures and Mortgage Bonds as provided hereinabove, such checks to be delivered by said Refining Company to the Trust Company for this purpose.

(b) All Old Debentures and Mortgage Bonds not already deposited with the Committee, under the terms of the Protective Agreement, may be so deposited by the holders thereof with the said Committee at any time up to and including July 1, 1923, and, when so deposited, shall be exchanged for New Debentures, bearing interest coupons payable January 1, 1924, in the same ratio as those already deposited with said Committee, and, in addition, shall receive, upon each and every bond so exchanged, an amount equal to all interest accrued and maturing on the same up to July 1, 1923, said amount to be paid by the Trust Company by check of the Refining Company, which the latter Company shall deliver to the Trust Company for this purpose.

(c) All Old Debentures and Mortgage Bonds not deposited with said Committee, as above provided, on or before July 1, 1923, can

only be exchanged when presented for exchange either by the Refining Company or the Starch Company; but neither the Starch Company nor the Refining Company shall be under any obligation to make any such exchange. The New Debentures issued in exchange for Old Debentures and Mortgage Bonds so exchanged subsequently to July 1, 1923, shall bear the coupon maturing on the interest date next succeeding the date of exchange. Provided, however, that, whenever the Trust Company shall make any such exchange as above set out, it shall deliver to the Refining Company for every five New Debentures guaranteed by the Refining Company and issued in exchange, alternately one Old Debenture or one Mortgage Bond, from those received in exchange, as the consideration hereinabove provided for the Refining Company's guarantee, but the old securities so delivered to the Refining Company shall not be subject to further exchange for New Debentures.

5. (a) The Old Debentures and Mortgage Bonds received by the Trust Company, in exchange for New Debentures shall not be cancelled, but shall be kept alive; and all Old Debentures and Mortgage Bonds, which shall not be delivered to the Refining Company, as consideration for its guarantee, shall be held by the Trust Company, as trustee for the equal benefit of all the holders of the New Debentures in proportion to their respective holdings of the same, subject to all the provisions of the trust agreement referred to in article 9 hereof.

(b) Until such time as the Trust Company shall be notified in writing by the holders of one, or more, of said New Debentures of some default in the payment of the principal, or interest, of some of said New Debentures, the said Trust Company (except with the consent of the Starch Company, or unless proceedings shall be instituted to enforce the said Old Debentures or the mortgage by which said Mortgage Bonds are secured) shall not take, or be entitled to take, any proceedings to enforce the collection of the principal, or interest, of said old securities, except as hereinbefore provided. If, at any time, all of the said Old Debentures, or said Mortgage Bonds, outstanding, including those delivered to the Refining Company, shall be surrendered to the Trust Company, the same shall be cancelled, so far as the same may not have been already cancelled and delivered to the Starch Company; and, in the case of the Mortgage Bonds, the mortgage securing the same shall, in such event, be discharged of record.

In the event that eleven (11) of the said Old Debentures, or Mortgage Bonds, outstanding, shall not be surrendered to the Trust Company, then, and in such event, the Trust Company shall keep all of said securities in its possession alive, as hereinbefore provided; and, upon the maturity, or redemption, of said Old Debentures and Mortgage Bonds, the Trust Company shall collect and hold the principal of the same as a sinking fund to be applied equally to the satisfaction of the said New Debentures.

Upon their maturity, or redemption, any such sinking fund moneys in the hands of the Trust Company may, on request of the Starch Company, be invested in said New Debentures, or in such securities as trustees are permitted to invest in by the laws of the State of New York.

All interest accruing on such sinking fund moneys, or investments, shall be paid over to the Starch Company, so long as there shall be no default in the payment of the principal, or interest, of said New Debentures. Provided, however, that if, and when, all the Old Debentures shall be surrendered to the Trust Company and cancelled, said Trust Company shall thereupon turn over to the Starch Company all moneys then in its hands, which are the proceeds of the Old Debentures redeemed, and all interest thereon, and, in like manner, if, and when, all the Mortgage Bonds are surrendered to the Trust Company and cancelled, said Trust Company shall thereupon turn over to the Starch Company all moneys in its hands, which are the proceeds of Mortgage Bonds redeemed, and all investments thereof and interest thereon.

6. If, by reason of the exchange of the Old Debentures or Mortgage Bonds for New Debentures, any person, or persons, or corporation, or corporations, shall become entitled to fractional amounts of said New Debentures, Scrip for all such fractional amounts, in the form attached to this agreement, marked "B," shall be issued and delivered to such person or corporation. Said Scrip shall bear no interest, but, when consolidated with other Scrip into amounts of one thousand (\$1,000) dollars, a New Debenture therefor shall be issued, upon presentation to the Trust Company for exchange of the Scrip so consolidated. Said New Debenture, provided the Scrip shall have been issued in exchange for Old Debentures, or Mortgage Bonds, deposited for exchange, on or before July 1, 1923, shall bear the interest coupon payable January 1, 1924.

7. (a) If the Starch Company shall make default in the payment of any interest maturing upon said New Debentures, and such default shall continue for thirty (30) days, and if the Refining Company shall not, within such time, make good such default, then, and in such event, the Trust Company, acting as the agent, or trustee, of the holders of said New Debentures then outstanding, if requested to do so in writing by owners of one-third in amount of said New Debentures then outstanding, shall declare the principal of all the said New Debentures due and payable, and the Starch Company, the maker thereof, agrees with the Trust Company, for the benefit of the holders of said New Debentures, that the same shall forthwith become immediately due and payable; and the Refining Company hereby consents and agrees that the principal of said New Debentures shall thereupon become and be immediately due and payable.

(b) In case of any such default as aforesaid, the Trust Company shall proceed, when and in such manner as it may be requested in writing by the holders of one-third in amount of said outstanding New Debentures, to enforce the rights of the holders of the New Debentures, said Trust Company acting as the agent, or trustee, of an express trust, appointed as above provided, of the holders of all said outstanding New Debentures. But no holder of any New Debentures shall have the right, independently of the Trust Company, to take any action, or commence, or conduct, any proceedings in the enforcement of said New Debentures, either against the Starch Company or the Refining Company, or both, unless he shall first have joined with the holders of one-third of the outstanding New Debentures in a request to the Trust Company to act and such request, after proper tender of indemnity, shall have been refused. Said Trust Company shall not be compelled, as the agent, or trustee, of the holders of the New Debentures, to take any action, or proceeding, in the enforcement of said New Debentures, or to do any act, or thing, in the premises, unless it shall have been first indemnified against loss, or liability, to its satisfaction, nor shall such Trust Company, as such agent, or trustee, or otherwise, be responsible, or liable, for any act, or thing done, in, or about, the premises, except for its own wilful default and gross negligence; and the Trust Company shall be entitled to reasonable compensation for all services performed by it hereunder.

(c) The Trust Company, by authenticating said New Deben-

tures, accepts the agency, or trusteeship, hereinbefore agreed to by the Starch Company, for the benefit of the holders of said New Debentures.

(d) It is the intention of the Starch Company, the maker thereof, and of the Refining Company, the guarantor thereof, and of the holders of this issue of New Debentures, and of the Trust Company as aforesaid, that the New Debentures shall be executed and delivered in the City and State of New York, and, in case of default as above mentioned, payment thereof shall be enforced by and through the Trust Company, as agent and trustee of an express trust, and in accordance with the laws and practice of the State of New York.

8. There shall be no recourse to the stockholders, officers, or directors of the Starch Company, or of the Refining Company, for the payment of the New Debentures.

9. (a) The Starch Company shall make, execute and deliver to and with the said Doe Loan & Trust Company an agreement, to perform the provisions of this contract in reference to the issuance and authentication of said New Debentures, after the same shall have been duly guaranteed by the Refining Company, which agreement shall be in form and contain such provisions as shall be approved of by the said Committee.

(b) Said agreement may provide that the Trust Company, as trustee for the holders of the New Debentures, shall, upon the request of the Refining Company, or of the Starch Company, in case any contingency exists by reason of which proceedings may be taken under the mortgage given to secure the said Mortgage Bonds, whether by way of foreclosure or otherwise, take such action as may seem advisable for the protection of such Mortgage Bonds, or the enforcement of the same; and, in case proceedings shall be instituted to enforce the said Old Debentures or of the mortgage by which said Mortgage Bonds are secured, the said trustee may take such action in the matter as to it may seem proper, or as may be requested by the said Refining Company or the said Starch Company.

(c) In the event that, upon the enforcement of the said Old Debentures, or the said Mortgage Bonds, any property of the said Starch Company, or any property formerly of the Starch Manufacturing Company, shall be purchased either by the Starch Company or the Refining Company, the said trustee shall deliver the

Old Debentures, or the Mortgage Bonds in its possession to such purchaser for use by such purchaser in completing the payment for the property so purchased. In any such case, the Trust Company shall turn over to the purchaser all moneys in its hands, which are proceeds of the Old Debentures, and all investments thereof and interest thereon, if said proceedings shall have been brought to enforce said Old Debentures, or all moneys in its hands, which are the proceeds of the Mortgage Bonds, and all investments thereof and interest thereon, if such proceedings shall have been instituted to enforce said Mortgage Bonds.

10. Such changes may be made in the form of the New Debentures and Bond Scrip as counsel may direct and as may be necessary to conform to the rules of the New York Stock Exchange, for the purpose of having the same listed, provided, however, that such changes do not affect any of the essential provisions of the New Debentures and Bond Scrip.

11. So long as any of the New Debentures shall remain outstanding and unpaid, the Doe Starch Company shall not make any new mortgage upon the property, or any part thereof, then owned by it, without, also, thereby including therein every New Debenture, equally and ratably with every bond issued under and secured by any such mortgage.

IN WITNESS WHEREOF, the Doe Starch Company and the Doe Products Refining Company have caused this instrument to be signed in their respective behalfs, by their respective Presidents, and their respective corporate seals to be hereunto affixed and attested, by their respective Secretaries, on the 5th day of January, 1923, in the Borough of Manhattan, City and State of New York, and the said John Doe, Richard Roe and Henry Koe have hereunto set their hands and seals, on said 5th day of January, 1923.

Doe Starch Co.,

By John Jones,

President.

(Seal)

Attest:

John Green,

Secretary.

(Seal)

Attest:

Thomas Smith,

Secretary.

Doe Products Refining Co.,

By John Doe

President.

John Doe (L.S.),

Richard Roe (L.S.),

Henry Koe (L.S.),

Committee.

"A."

UNITED STATES OF AMERICA

STATE OF NEW JERSEY

FIVE PER CENT TWENTY YEAR DEBENTURE COUPON GOLD BOND

Authorized Issue \$5,281,000

No.

Doe Starch Company, a New Jersey corporation, for value received, hereby promises to pay to the bearer hereof, or, if this Debenture Bond be registered, then to the registered owner thereof, at the office of the Doe Loan & Trust Company, at No. 57½ Broadway, Borough of Manhattan, City and State of New York, One Thousand Dollars in gold coin of the United States of America, of the present standard of weight and fineness, on the first day of July, 1943, and, also, to pay interest on said principal sum, from the date hereof, in like gold coin, at the rate of five (5%) per centum per annum, semi-annually, on the first day of January and on the first day of July in each year, on presentation and surrender of the interest coupons hereto annexed, as they severally mature.

This Debenture Bond is one of an issue of Debenture Bonds of like tenor, date and amount, numbered consecutively from 1 to 5,281, aggregating \$5,281,000, issued under and subject to all the provisions of an agreement dated the 5th day of January, 1923, made by the Doe Starch Company with the Doe Loan & Trust Company, as Trustee, and on file at the office of said Trustee, in the Borough of Manhattan, City of New York.

This Bond is entitled to all the benefits of said agreement.

None of these Debenture Bonds shall be valid, or obligatory, for any purpose whatever, unless authenticated by the certificate of said Trustee endorsed hereon.

There shall be no recourse to the stockholders, officers, or directors of the Doe Starch Company, maker hereof, or of the Doe Products Refining Company, the guarantor hereof, for the payment of this Debenture Bond.

WITNESS the corporate seal of the Doe Starch Company hereunto affixed by its President and Secretary, thereunto duly authorized, and a facsimile signature of the Treasurer engraved upon the

annexed coupons, all at the City of New York, thisday
of.....

Doe Starch Co.,
By John Jones,
President.

(Seal)

Attest:

John Green,
Secretary.

COUPON

\$25.00

The Doe Starch Company will pay to the bearer on the
day of....., at the office, or agency, of said Company in
the Borough of Manhattan, New York City, Twenty-five Dollars in
gold coin of the United States of America, for six months' interest
then due on its Five Per Cent Twenty Year Debenture Coupon
Gold Bond.

No.....

George Brown,
Treasurer.

CERTIFICATE OF AUTHENTICATION

It is hereby certified that the within Debenture Bond is one of
the Debenture Bonds described in the within mentioned agreement
made by the Doe Starch Company with the undersigned Trustee.

Doe Loan & Trust Company,
By Richard Koe,
Vice-President.

"B."

DOE LOAN & TRUST COMPANY,
571½ Broadway,
New York City.

No.....

DOE STARCH COMPANY

FIVE PER CENT TWENTY YEAR DEBENTURE COUPON GOLD BOND SCRIP

This is to certify that the bearer is entitled to.....dollars,
representing a fractional principal of one Five Per Cent Twenty
Year Debenture Coupon Gold Bond of the Doe Starch Company.

Dated,

This scrip is convertible at its face value into said bonds, when presented in amounts of one thousand dollars, or multiples thereof.

No interest will be paid upon this scrip, until converted into bonds, and such conversion shall be in accordance with all the terms of a contract by and between the Doe Starch Company, Messrs. John Doe, Richard Roe and Henry Koe, Committee of certain bondholders of the Doe Starch Company and Doe Starch Manufacturing Company, and the Doe Products Refining Company, dated January 5, 1923, copies of said contract being on file at the office of the Doe Loan & Trust Company, in the Borough of Manhattan, City and State of New York.

Doe Loan & Trust Company,
Trustee.

By Richard Koe,
Vice-President.

New York,.....1923.

No. 140.

Plan and agreement for reorganization of corporation, whereunder new corporation is to be formed to take over all of its assets, subject to existing claims and indebtedness, which new corporation is to assume and to pay partly in cash and partly by issue of bonds, and whereunder stockholders of old corporation are to receive stock of new corporation in exchange for their holdings.¹⁸

THIS AGREEMENT, made as of January 5, 1923, by and between John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City, Richard Roe and Henry Koe, both residing at No. 371½ Broadway, Borough of Manhattan, New York City, and John Smith and Thomas Smith, both residing at No. 571½ Broadway, Borough of Manhattan, New York City (herein called the "Committee"), parties of the first part, and such holders and owners of notes, accounts, or other claims of whatsoever nature the same may be against the Doe Foundry Corporation (herein called the "Company"), a corporation, duly organized under the laws of the State

¹⁸ Cf. *Northern Pacific R. Co. v. Boyd* (1902), 228 U. S. 482, 33 Sup. Ct. Rep. 554, 57 Law ed. 931; *Ecker v. Kentucky Refining Co.* (1911), 144 Ky. 264, 138 S. W. 264; *State v. New Orleans Water Supply Co.* (1904), 111 La. 1049, 36 So. 117.

of New York, and having its principal office at No. 231½ William Street, Borough of Manhattan, New York City, as may become parties hereto (herein generally called the "Depositors"), parties of the second part, and The Roe National Bank of the City of New York (herein called the "Depositary"), party of the third part, WITNESSETH:

WHEREAS, the Committee has been requested by the holders of a majority in amount of claims against the Company to act as a Committee for creditors to aid in putting into effect the attached plan of reorganization; and

WHEREAS, it is understood that there have been under-written (largely by stockholders of the Company) subscriptions to five hundred thousand (\$500,000) dollars face amount of the Series B bonds, to be issued pursuant to the provisions of said plan:

NOW, THEREFORE, the parties hereto, in consideration of the premises, and of the mutual covenants herein contained, hereby agree (each of the Depositors for himself, and not one for the other), as follows:

FIRST: Holders of claims against the Company may become parties to this Agreement, by signing the same, or by depositing their claims with the Depositary, or by both signing this Agreement and so depositing their claims. Such deposit may be made, by delivering to the Depositary any and all notes, acceptances, contracts, or other instruments evidencing all claims of any depositor against the Company, or, if any claim is not evidenced by an instrument in writing, by delivering an itemized statement of such claim, in all cases accompanied by duly executed assignments, or transfers, thereof to the Committee, without recourse, in such form, or forms, as shall be prescribed by the Committee.

SECOND: (a) Depositors shall receive from the Depositary, as the agent, or representative, of the Committee, a certificate of deposit in appropriate form, to be prescribed by the Committee, specifying the general nature of the claim deposited, and the holder of any certificate of deposit shall be entitled to the rights and benefits accruing hereunder, and shall be subject to all of the provisions of said certificate, and to all obligations of Depositors hereunder.

(b) Certificates of deposit shall be transferable only in the manner therein specified.

(c) By the acceptance of a certificate of deposit issued here-

under, the holder thereof irrevocably assents to the said Plan, and agrees to be bound by this agreement, to the same extent as though he had duly executed and delivered the same; and the Committee and the Depositary shall be entitled to treat the record holder of any certificate of deposit as the absolute and unrestricted owner of the claim represented thereby, and shall not be affected by any notice to the contrary.

THIRD: In case of the transfer of any certificate of deposit, as herein provided, the transferee thereof shall be substituted for the prior record holder, for all purposes of this Agreement, and shall be bound by the provisions of this Agreement to a like extent, as though he had duly executed and delivered the same.

FOURTH: Depositors hereby irrevocably request the Committee to endeavor to carry out the provisions of the Plan, either in its entirety, as now provided therein, or with such changes as may, in the judgment of the Committee, become advisable; and the Depositors do hereby grant to, and vest in, the Committee all of the rights, powers and authority necessary, or advisable, for such purposes.

FIFTH: (a) The Committee is hereby authorized and empowered to declare the Plan operative, in behalf of Depositors, when, in their unrestricted judgment, it is advisable so to do.

(b) The Committee may, also, terminate this Agreement, at any time, and, in such event, the deposit by the Committee with the Depositary of assignments of their respective claims to the record holders of certificates of deposit and notice to them of such action, by mailing the same, directed to the certificate holders, at the addresses, if any, appearing upon the records of the Depositary, shall discharge the Committee from all liability and responsibility hereunder.

SIXTH: (a) The Committee agrees, if, in its judgment, sufficient claims are deposited hereunder, to seek to carry the Plan and Agreement into effect, and the Depositors agree that any action under, or construction of, this Agreement by the Committee, acting in good faith, shall be conclusive and binding upon them.

(b) The Committee assumes no responsibility for the execution of the Plan, and neither the Committee, nor any member thereof, nor the Depositary, shall be liable for any act, or omission, except wilful malfeasance, nor for any act, or omission, of any agent believed by them to be trustworthy.

SEVENTH: (a) The Committee hereby appoints The Roe National Bank of the City of New York as Depositary under this Agreement, and the Depositary hereby accepts such appointment, and becomes a party to this Agreement, solely for the purpose of evidencing such acceptance.

(b) In case of the resignation of any Depositary, or of its refusal to act further as such, the Committee may select and appoint a new Depositary, and, in such case, the terms of this Agreement shall apply to such new, or substituted, Depositary, with the same effect as though named and designated herein. Such appointment shall be made by an instrument in writing, signed in duplicate by, or in behalf of, the Committee and lodged with the Depositary theretofore acting and with the new Depositary therein designated.

EIGHTH: (a) The Committee shall have the sole control, discretion and management, in carrying out the Plan and this Agreement, in behalf of the holders of certificates of deposit issued hereunder. As the owner of the deposited claims, or otherwise, it may take, or cause to be taken, or otherwise participate in, such actions, or proceedings, including any application for the appointment of a receiver of the property of the Company, whether in bankruptcy proceedings, or otherwise, give such directions, execute such papers, and perform such acts as the Committee may consider wise, or proper, in order to advance, preserve, protect and/or enforce the interests of the Depositors.

(b) The Committee is empowered to exercise said rights and powers, or any of them, in any way it may deem expedient, including initiating, or joining in, proceedings to have the Company adjudicated bankrupt, or initiating, or participating in, as plaintiff, or otherwise, any action at law, or suit in equity, designed to accomplish said objects, or any of them, and the Committee may otherwise, in its uncontrolled discretion, exercise in respect of any deposited claim, or all deposited claims, all powers which any depositor, or all depositors, might have exercised in respect thereto, had such claim, or claims, not been deposited hereunder, including the right to initiate, or institute, any proceeding, or suit, as the owner of any deposited claim, or of any number thereof.

NINTH: All powers herein granted may be exercised before, or after, the adoption, or approval, by the Committee of any plan for

reorganizing, or readjusting, the affairs of the Company, whether through the creation of a new corporation, or otherwise.

TENTH: (a) The Committee may employ counsel, a Depositary, other agents, and assistants, and may incur and discharge any and all expenses, which it may deem proper for the purpose of making the Plan effective and carrying out the provisions of this Agreement, including proper compensation to the Depositary. The Committee shall be the sole judge of the propriety, or expediency, of any and all expenses incurred by it, and of the amount and apportionment thereof, and shall have, and is hereby given, a lien and charge upon the deposited claims and their avails for all expenses incurred by it, which shall be pro-rated against all deposited claims on the basis upon which they shall ultimately be established, either by agreement with the Company, or in any other manner which the Committee shall deem necessary or proper.

(b) It is understood, however, that the Committee has arranged, or will arrange, that the underwriters of the subscriptions to the Series B bonds will assume and pay all expenses of the Committee, including the expenses of, and compensation to, the Depositary, in the event that the Plan shall not be consummated, and that such expenses and compensation shall be assumed and paid by the proposed new corporation, in the event that the Plan shall be consummated. Accordingly, the charge herein made of such expenses and compensation against the deposited claims is conditional upon their, or some part thereof, not being paid by said underwriters, or said new Company, and such charge shall be limited to the amount thereof not so paid.

(c) In no event, however, shall the total expenses of the Committee, including the expenses of, and compensation to, the Depositary, exceed one per cent of the amount of the deposited claims as finally adjusted, or determined.

(d) In case the Plan shall not be consummated, the deposited claims shall be reassigned and returned to the Depositors, or their assignees, upon surrender of the certificates of deposit respectively representing them and upon payment by the holders of said certificates of their proportionate amount of said expenses and compensation, if any thereof shall be chargeable against the deposited claims, as hereinbefore provided.

ELEVENTH: (a) The Committee may, from time to time, as it may deem wise, in any manner, purchase on any reorganization, or

sale by a receiver, or otherwise, contract in regard to, deal in, acquire, sell, or dispose of, any property, securities, indebtedness, or other obligations of the Company. In order to make payments therefor, or in connection therewith, and, in general, in exercising its powers under any of the provisions hereof rendering such use convenient, or advisable, the Committee may use any funds, or property, at any time subject to its control and, in order to procure funds for any such purpose, it may pledge, or otherwise charge, the deposited claims. In the event of the sale in, or in connection with, bankruptcy, or judicial, proceedings, or otherwise, of any, or all, of the property of the Company, the Committee, directly, or through others, may purchase such property, either in behalf of the Depositors, or in conjunction with others, and may utilize the deposited claims in making payment for any property so purchased, to the extent of the aggregate amount of the purchase price distributable on account, or in full payment, thereof.

(b) The Committee may borrow such sums of money, upon such terms, and subject to such conditions, and for such purposes, as, in its discretion, it may deem wise to protect, or enforce, the interests of the depositors, and, to secure all moneys so borrowed, it may pledge, hypothecate, or assign, all of the deposited claims, or their avails.

TWELFTH: All claims deposited hereunder shall be subject to the order and control of the Committee, which shall be vested with the legal title thereto; and the Depositary shall deal with, deliver, or otherwise dispose of, said claims and all evidences thereof at any time received by it, upon, and pursuant to, the written order of the Committee, or a majority thereof, and shall be under no liability, or responsibility, for the application, or use, thereof by the Committee.

THIRTEENTH: No claim deposited hereunder may be withdrawn, unless the Committee shall fail to declare operative some plan, within one year from the date hereof; and, in such event, any holder of a certificate of deposit may withdraw the claim represented thereby, upon surrender of such certificate of deposit and payment of the proportionate part of any expenses, including compensation to the Depositary, chargeable upon, or against, said claim, pursuant to the provisions hereof; and such Depositor shall, thereupon, become entitled to a reassignment of such claim.

FOURTEENTH: The forms of all notices and other instruments,

as well as the details of any procedure necessary, or advisable, in connection with the performance of this Agreement, or the consummation of any plan, which the Committee is entitled to adopt and consummate, shall be prescribed by the Committee, in its discretion, and, when so prescribed, must be observed by the Depositors. If found desirable, the Committee may vest the legal title to deposited claims in its nominee, or nominees, who may, but need not, be a member, or members, of the Committee.

FIFTEENTH: (a) The Committee shall have power to make such regulations as it may deem proper in respect of the issue by the Depository of certificates of deposit, in lieu of any that may be lost, or destroyed.

(b) The Committee may limit and, from time to time, extend the time, whether or not previously limited, within, and fix the conditions under, which deposits may be made hereunder; and may impose such penalties as it may deem proper, in respect of deposits which it shall receive after any such limit of time shall have expired.

(c) The Committee, also, shall have power, in its discretion, and upon such terms as it may deem proper, to accept, at any time, the surrender of any certificate of deposit issued hereunder, and to assign, or otherwise transfer, to the holder of such certificate the claim represented thereby.

(d) In connection with the exchange of claims for bonds as provided in the Plan, or any plan which the Committee is hereby authorized to adopt, the Committee is hereby authorized to adjust, in such manner as it may deem proper, any fractional part of any claim.

SIXTEENTH: No enumeration of specific powers in this Agreement shall be construed to limit any grant of general powers contained herein.

SEVENTEENTH: (a) The Committee may act by a majority of its members with, or without, formal meetings, provided that all action otherwise than in meeting assembled shall be evidenced by a writing signed by a majority of its members, or by their proxies duly appointed in writing. The members of the Committee shall have the right to act by proxy, and may, but shall not be required to, select as proxy another member of the Committee.

(b) The Committee may, at any time, increase its number, and any additional members chosen by the Committee, together with

those above named, or their successors, shall constitute the Committee, with the same effect as though named herein.

(c) The Committee may fill any vacancy in its membership, but shall not be obliged to do so; and, in case of any vacancy, the remaining members shall have all of the powers and rights of the Committee as originally constituted.

EIGHTEENTH: (a) The Committee shall be the sole judge as to the time and conditions under which it shall declare operative, or assent to, the operation of the Plan, or any plan, which it shall be, or become, entitled to accept, or make hereunder; and it shall have power, in its discretion, at any time, to alter, modify, depart from, or abandon, the Plan, or any part thereof.

(b) Any alteration, or modification, when made, or accepted, by the Committee shall immediately become a part of the Plan, and of this Agreement, and a statement thereof shall be filed with the Depositary. In case, in the judgment of the Committee, such change substantially affects the interests of the Depositors to their disadvantage, it shall give written notice thereof to the record holders of certificates of deposit, by mailing the same, directed to the addresses, if any, appearing upon the records of the Depositary. Every holder of a certificate of deposit, who shall not notify the Committee, by a writing received by the Committee, within twelve days after the date of the mailing of notice of the proposed change, that he dissents from the proposed change, shall be deemed to have assented thereto and to have approved the Plan, as so changed.

NINETEENTH: Upon the completion of the business of the Committee, the Committee shall file its accounts with the Depositary, and shall arrange for the distribution to Depositors of the bonds, cash, and other property, if any, then held by, or for, the Committee, upon the surrender of certificates of deposit and payment by the holders of their *pro rata* share of any compensation of the Depositary, and other expenses of the Committee, chargeable against the deposited claims, as herein provided. The delivery to the Depositary of the bonds, cash and/or other property, if any, to which the holders of certificates of deposit may become entitled, pursuant to any Plan declared operative, in accordance with the provisions hereof, and notice of such delivery, by mailing the same, directed to the holders of certificates of deposit, at the addresses, if any, furnished to the Depositary, shall be deemed a distribution to

the said holders and shall discharge the Committee from further responsibility hereunder.

TWENTIETH: (a) Any member of the Committee, and any corporation in which he may be an officer, director, or otherwise interested, or any firm of which he may be a member, and the Depositary, its respective officers and agents, may be, or become, pecuniarily interested in any property, or matters, which are, or may become, the subject of, or in any wise related to, the provisions of this Agreement, including participation in, or under, any underwriting agreement mentioned herein; and may contract with the Committee, or be a member of any other committee, which may contract with the Committee, and may, likewise, in case of the organization of any new corporation, as contemplated by the Plan, or any alteration, or modification, thereof, accept any official position therein, or act as director thereof, or accept employment therefrom, either before, or after the consummation of such plan.

(b) The members of the Committee shall serve as such, without compensation.

TWENTY-FIRST: It is agreed that no estimate, or statement, contained in this agreement, or in the Plan, or in any circular, or advertisement, published, or which may be published, or distributed, by the Committee, shall be taken as a representation, or a warranty, or as a condition upon which any deposit, or assent, is made, or given.

TWENTY-SECOND: The Committee is authorized to arrange, in behalf of the holders of certificates of deposit, or to consent, in their behalf, in respect of any and all details associated with the organization of the proposed new corporation mentioned in the Plan, the transfer thereto of all of the assets of the Company, the terms and provisions (other than those contained in the Plan) and the issue of the bonds and mortgage contemplated by the Plan, and any and all other details not directly, or indirectly, covered hereby, including, but not restricting, the authority of the Committee to the selection of a name for said corporation, the state, or place, of its incorporation, the provisions of its certificate of incorporation, or charter, the provisions of its by-laws, the selection of directors and officers therefor, and any and all other matters and things associated with the establishment of said corporation and its equipment, for the transaction of the business contemplated by said Plan.

TWENTY-THIRD: The Plan attached hereto, and any modification, or other change, therein effected, as herein provided, shall be taken and considered to be a part of this Agreement, with the same effect as though therein set out in full.

TWENTY-FOURTH: (a) This agreement shall be signed by a majority of the Committee and by the Depositary, and, so signed, shall be lodged with the Depositary. It may, however, be executed by the Depositors in any number of counterparts, with the same effect as though all parties thereto had executed the same instrument.

(b) This Agreement, and the provisions of the Plan, shall bind and benefit the several parties, and their, and each of their, survivors, executors, administrators, successors and assigns.

TWENTY-FIFTH: This Agreement shall be deemed to be made under, and shall be governed by, the laws of the State of New York in all respects, including matters of construction, validity, and performance.

IN WITNESS WHEREOF, the Committee and the Depositary have duly executed this Agreement, in duplicate, one of which shall be lodged with the Committee and the other with the Depositary, and the Depositors have become parties hereto, as herein provided, all as of the day and year first above written.

John Doe,
Chairman,
Richard Roe,
Henry Koe,
John Smith,
Thomas Smith,
Committee.

The Roe National Bank of the
City of New York,

By James Green,
Vice-President.

(Seal)

Attest:

Henry White,
Assistant Cashier.

NAME OF CREDITOR.	ADDRESS.	AMOUNT OF CLAIM.
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DOE FOUNDRY CORPORATION

PLAN

A new corporation shall be organized to take over all of the assets of Doe Foundry Corporation, subject to existing claims and indebtedness, which it will assume and agree to pay. This new corporation shall be capitalized, as follows:

BONDS

Six per cent 3-year mortgage bonds, of an amount to be determined by the aggregate of creditors' claims as accepted, or determined, and the Class B bonds to which reference is hereinafter made. On the basis of information now available, it is estimated that the total issue will be approximately.....\$1,000,000

All, or any part, of the bonds issued under the mortgage shall be redeemable at par on any interest date; if less than all, those to be redeemed shall be determined by lot. In case the new corporation shall show a net operating loss in excess of \$250,000 at any time before the bonds mature, in accordance with their terms, and such loss shall not be made good to the new corporation, within thirty days, the bonds shall become due and payable; but the method of determining such operating loss shall be arranged satisfactorily to the Creditors Committee and the new Corporation.

The bonds shall be issued in two series—A and B.

A. *Series A Bonds*

A sinking fund of \$50,000 shall be set up every six months, to pay, or redeem, Series A bonds, at par.

Series A bonds shall be issued to creditors, and shall be limited in amount approximately to 90% of amount of accepted, or established claims.

Authorized issue will be, say.....\$500,000
(See Note *.)

B. *Series B Bonds*

Series B bonds shall be convertible into common stock, at \$100 a share.

Series B shall be limited in amount to the difference between the amount of Series A bonds and the total authorized issue, say
\$500,000.

Subscriptions to the amount of \$500,000 have been made by a Syndicate formed to underwrite \$500,000 of Series B bonds, at par, to provide \$500,000 cash to make payments of 10% on account to creditors and to provide working capital.

CAPITAL STOCK

7% preferred stock, cumulative after the end of the fourth year, which shall be preferred as to assets and dividends and shall be entitled to \$100 a share in liquidation, before holders of common stock receive anything; to be exchanged, share for share, for present preferred stock of Doe Foundry Corporation, on surrender of same and of all claims for accumulated dividends. The number of such shares shall be.....25,000

Common stock of no par value. The number of shares thereof shall be100,000

NOTE:

The balance Sheet of December 31, 1922, shows general indebtedness, as follows:

Notes Payable	\$254,000
Accounts Payable	100,000
Uninvoiced material	5,000
Accruals	191,000
	<hr/>
	\$550,000

Amount of cash payment (approximately 10%)..... 50,000

Balance payable in Series A bonds.....\$500,000
for which purpose bonds to the face amount of \$500,000 will be authorized.

Subscriptions to the amount of \$500,000 have been made by a Syndicate formed to underwrite the \$500,000 par value of Series B Bonds at par. Upon the purchase of these bonds, the Syndicate will receive 75,000 shares of common stock of the new Company. All holders of common stock of Doe Foundry Corporation, who assent to the plan, will be offered an opportunity to subscribe for their *pro rata* share (based upon the amount of stock deposited) of the \$500,000 Series B Bonds at par, and, in addition to the par

amount of Series B purchased by them, will receive their *pro rata* of the 75,000 shares of common stock of the new Corporation; and the amount of Series B Bonds and common stock of the new Corporation to be received by the Syndicate will be reduced by the amount so taken by the holders of the common stock of Doe Foundry Corporation.

On the basis of the foregoing figures, the securities of the new Corporation will be distributed approximately, as follows:

	<i>Bonds Series A</i>	<i>Bonds Series B</i>	<i>Shares of Preferred Stock</i>	<i>Shares of Common Stock</i>
To Creditors	\$500,000			
To Syndicate, and Doe Foundry Corporation stockholders who sub- scribe therefor		\$500,000		75,000
To Doe Foundry Corpora- tion preferred stockhold- ers			\$25,000	
To Doe Foundry Corpora- tion common stockhold- ers, who do not subscribe, may be given.....				{ 10% of present holdings
Reserved for conversion Series B Bonds.....				5,000
Out of the balance of the common stock, Subscrib- ers to the Syndicate, who are not stockholders of Doe Foundry Cor- poration, will, also, re- ceive a commission of 20 shares for each \$1,000 of their subscriptions to the Syndicate.				
Totals presently to be issued.....	\$500,000	\$500,000	\$25,000	See above

Holders of common stock of Doe Foundry Corporation, who deposit their stock, but who do not participate in the purchase of Series B Bonds, may be offered one share of common stock of the new Corporation for each ten shares of common stock of Doe Foundry Corporation deposited by them under the Plan, but no fractional shares shall be issued in connection with such exchange.

The members of the Creditors' Committee, of the Stockholders' Committee and the Managers of the Syndicate have all agreed to act, without compensation.

No. 141.

Agreement whereunder reorganization committee is authorized by bondholders to prepare, adopt and execute a plan for the reorganization of a railway company, which has defaulted on its mortgage.¹⁹

THIS AGREEMENT, made January 5, 1923, between such of the holders of the mortgage bonds or coupons of the Doe Railway Company (herein called the "Railway Company") as may become parties hereto (herein called the "Bondholders"), parties of the first part, and Richard Roe, Henry Koe and Thomas Koe, as a Committee, representing said Bondholders (herein called the "Committee"), parties of the second part, WITNESSETH:

WHEREAS, the Railway Company is insolvent, and has heretofore defaulted in the payment of interest upon its mortgage bonds, and suit has been commenced for the foreclosure of its mortgage, and the railroad and other property of the Railway Company is in the hands of a receiver heretofore appointed by the United States Circuit Court; and

WHEREAS, it is desirable and necessary that the holders of the mortgage and bonds and coupons of said Railway Company should organize for the protection of their mutual interests, and effect a reorganization of the affairs of the Railway Company either through, or without, foreclosure:

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES, AND OF THE CONSENT OF THE SEVERAL PARTIES OF THE SECOND PART TO ACT AS A COMMITTEE, AND OF OTHER GOOD AND SUFFICIENT CAUSES AND CONSIDERATIONS, THE PARTIES OF THE FIRST PART, EACH FOR

¹⁹ Adapted from *Industrial & General Trust, Ltd., v. Tod* (1905), 180 N. Y. 215, 73 N. E. 7.

HIMSELF, AND NOT FOR THE OTHERS, OR ANY OF THE OTHERS, AGREE WITH EACH OTHER AND WITH THE COMMITTEE, AS FOLLOWS:

1. (a) The Bondholders shall and will, on or before February 15, 1923, deposit their bonds with the Doe Trust Company, of the City of New York, with coupons annexed of October 1, 1920, and all succeeding coupons, and with suitable transfers thereof to bearer, in case the same are registered as to principal. The bonds so deposited shall be held by the Doe Trust Company, subject to the order and full control of the Committee, to be used for any purpose under this agreement. The deposit of such bonds shall transfer to the Committee the full legal and equitable title thereto, for all purposes of this agreement. The Bondholders, on depositing their respective bonds, shall receive negotiable trust certificates representing their interest, which certificates shall be in form approved by the Committee.

(b) The Committee may, also, in its discretion, in such cases and upon such terms and conditions as it may deem proper, authorize the Doe Trust Company to receive deposits of coupons of a date prior to October 1, 1920; and, if any such coupons shall be so deposited, especial trust certificates, in a form approved by the Committee, shall be delivered to the persons depositing the same.

(c) All persons depositing bonds, or coupons, shall, by accepting trust certificates, become parties hereto, with the same force and effect in every particular as though they had signed this agreement.

2. (a) The Bondholders hereby make, constitute and appoint Richard Roe, Henry Koe and Thomas Koe, and their respective successors (to be appointed as hereinafter provided) as the Reorganization Committee of the Railway Company; and they hereby constitute the said Reorganization Committee their only and exclusive attorneys, agents and trustees, and the attorneys, agents and trustees of each and every one of them, for the purpose of carrying out this agreement.

(b) The Bondholders hereby severally and separately confer upon the said Committee whatever power and authority it may be necessary for the Committee to exercise, in order to legally and sufficiently execute the said trust; and they, and each of them, also, constitute and appoint the said Committee their true and lawful attorneys, irrevocable, to execute, on their behalf, such instruments in writing, and to do such acts and things as to the said Committee

may seem proper, to enable it to carry out the said trust created by this agreement in all its parts; hereby giving and granting to said Committee full power and authority to do and perform all and every act and thing, which it may deem convenient and necessary to be done in and about the premises, as fully, to all intents and purposes, as the said Bondholders might, or could, do personally, hereby ratifying and confirming all that the said Committee shall lawfully do, or cause to be done, by virtue hereof.

(c) The said Committee is hereby further expressly authorized and empowered:

(1) To take such proceedings, give such directions, and institute, or cause to be instituted, all such suits, or proceedings, as it may be advised by counsel are necessary or proper;

(2) To take such steps to secure the sale and conveyance of the property and franchises of the Railway Company, either by means of existing legal proceedings, or by the institution of a new suit, or suits, or proceedings, or by negotiation, or agreement, or otherwise, as shall seem expedient to it;

(3) To enforce the rights of the Bondholders and to protect their interests in every way that said Committee may deem necessary or advisable;

(4) To attend all meetings of creditors, and to vote, in the names of the members of the Committee or in the names of the Bondholders, upon all questions that may arise at such meetings;

(5) To request and move the trustee under the mortgage securing the bonds deposited hereunder to exercise the powers, or any of the powers, conferred by such mortgage, if, in the judgment of the Committee, such action shall be necessary, or desirable, or in its discretion, to request the trustee thereunder to waive any provision in such mortgage; and

(6) Generally, to possess and exercise each and every right, power and privilege conferred upon the Bondholders, under the mortgage securing the bonds deposited hereunder, and to represent the Bondholders in respect thereof, as fully as the Bondholders, jointly or individually, could personally act, including the right and power to declare due and payable the principal of any bonds secured by mortgage upon any property, or franchise, of the Railway Company, or any part thereof, and to demand payment of the interest thereon, and annul any declaration, or demand, and to waive, or suspend, any default under the said mortgage.

(d) The powers hereinbefore given shall not be narrowed, or limited, by any enumeration of the powers conferred by this agreement.

3. (a) The Committee is hereby expressly authorized and empowered to act by the vote, or decision, of a majority of its number, to allow any member to vote by proxy, and to add to the number of its members, by an appointment made in writing, signed by a majority of the members of the Committee.

(b) Any vacancy in the Committee, arising either from death, resignation, or incapacity to act, may be filled by an appointment, made in writing by a majority of the members of the Committee. Any person appointed, either as an additional member, or to fill a vacancy, shall thereupon be, and become, possessed with, and shall exercise, all the duties, powers and trusts herein conferred, or imposed, upon the members of the said Committee, with the same force and effect as if he had been originally named herein.

4. (a) The Committee is hereby expressly authorized and empowered, and it shall be its special duty, to prepare and adopt a plan for the reorganization of the affairs of the Railway Company, with or without foreclosure.

(b) When the Committee shall have adopted such plan, a copy thereof shall be deposited with the Doe Trust Company. Notice shall thereupon be given to the holders of the trust certificates issued hereunder; and such plan shall become binding upon all of the said holders, who shall not withdraw herefrom (in the manner hereinafter provided), unless the holders of a majority in interest of the said trust certificates shall, within twenty (20) days after such notice, file with the Doe Trust Company their written dissent from the plan. Notice from the Committee to the holders of the trust certificates shall be given, by mailing the same, with postage prepaid, to the addresses registered by such holders with the Doe Trust Company at the time of depositing the bonds represented thereby. Such registered addresses may, from time to time thereafter, be changed by a notice in writing delivered to the Doe Trust Company.

5. (a) Any holder of a trust certificate issued hereunder, may, at any time, within thirty (30) days after the mailing to him of a notice of the filing of the plan of reorganization as hereinbefore specified, withdraw from this agreement and receive back the bond, or bonds, deposited by him, upon payment of his *pro rata* share of

the expenses theretofore incurred by the Committee; but such payment shall, in no event, exceed one-half of one per cent of the principal value of the bonds and overdue coupons represented by such certificate, or certificates, and upon the payment of his *pro rata* share of the expenses of the Committee, as above provided, the holder of such certificate, or certificates, shall be thereupon, and without further act, fully released from the obligations of this agreement and from such plan of reorganization; but as to every certificate holder, who shall not, within said period of thirty (30) days, withdraw the bonds represented by his certificate, or certificates, his assent and ratification of the said plan shall be conclusively and finally assumed, conferred and given.

6. (a) For the purpose of effecting a reorganization of the affairs of the Railway Company, the Committee is further authorized to take such steps as it may deem advisable for the formation of a new corporation, or to agree with any other party, or parties, for the formation thereof; and the Committee may take such steps as may be necessary for transferring to such new corporation all the assets of the Railway Company and for the acquisition thereof by such new company, at any judicial sale of such assets, or franchises.

(b) In case of any sale of any of the franchises, or assets, of the Railway Company, the Committee is authorized and empowered, in its discretion, to purchase the same, or any part thereof, for the account and benefit of the Bondholders, at such price as the Committee may deem expedient; but the Committee shall be under no obligation to effect any such purchase. For such purposes, the Committee may incur such expenses as it may deem judicious, and may use the bonds deposited hereunder, for the purpose of paying for any assets or franchises purchased.

(c) If the Committee shall purchase the whole, or any part, of the assets, or franchises, of the Railway Company, as hereinabove authorized, the same may be conveyed to it, or to any person, or persons, or corporation, or corporations, that the Committee may designate.

7. (a) The time for the Bondholders of the Railway Company to become parties to, and accept the benefit of, this agreement may be extended, from time to time, as the Committee may, in its discretion, determine; and the Committee may, at any time, admit to the benefit of this agreement any Bondholder, upon his depositing his bonds hereunder. The Committee may, in its discretion,

impose exceptional terms upon any Bondholder, who shall desire to become a party hereto after the time hereinbefore limited shall have expired.

(b) It is expressly understood, however, that nothing herein contained shall be construed to give any rights, at law or in equity, or any privilege, or interest herein, of any sort, or description, whatsoever, to any Bondholder, who may not become a party to this agreement within the time hereinbefore fixed, or (if later) by the permission of the Committee.

8. The Committee is hereby expressly authorized and empowered to borrow any sum of money that may be necessary for the purpose of paying its expenses, and, also, to borrow any sum of money that may be needed for the purpose of making a cash payment at any sale of the assets, or franchises, of the Railway Company, and for any other purpose of this agreement, or of the plan to be adopted hereunder; and to pledge, for the repayment of the moneys so borrowed, or any other purposes hereunder, any, or all, of the deposited bonds; and the Committee shall have a lien thereon and on the assets of the Railway Company, which it may purchase, and on any other assets coming into the hands of the Committee, for its reasonable compensation and expenses, and for any liabilities properly incurred by the Committee hereunder. No Bondholder shall otherwise be personally liable for any such expenses, payments or liabilities.

9. The Committee is authorized and empowered to appoint such sub-committees, counsel, attorneys, agents, experts, or other employes, as it shall see fit, and to pay such reasonable compensation for their services and incur such expenses as, in the opinion of the Committee, may be necessary in carrying this agreement into effect. The Committee shall, also, have the power to investigate the physical and financial condition of the Railway Company, and the accounts and affairs thereof, including the legal status of the Railway Company and of its bond issues, indebtedness and other concerns of every nature, and to recommend and endeavor to secure any action by the receiver, or the court appointing him, in the practical operation of the property of the Railway Company, which it may deem conducive to the best interests of all concerned.

10. (a) The members of the Committee, as individuals, may become parties to this agreement as Bondholders, and shall be en-

titled to all the rights and benefits accruing to any other Bondholder.

(b) The members of the Committee may be, or become, pecuniarily interested in any of the property, or matters, which are the subject of this agreement, and may become stockholders, or directors, in any new corporation that may be formed to acquire the assets, or franchises, of the Railway Company, and may receive the securities thereof, and may become members of any syndicate formed in connection therewith, or in connection with any plan of reorganization hereunder.

(c) The members of the Committee shall be allowed a reasonable compensation for their own services, together with all expenses and outlays incurred by them, in carrying out this agreement, all of which shall be charged upon the bonds deposited hereunder and upon the interest of the Bondholders respectively in the assets and franchises of the Railway Company.

11. (a) The Committee may supply any defects, or omissions, which it may deem necessary to be supplied, to enable it to carry out the general purposes of this agreement.

(b) The Committee is authorized to construe this agreement, and its construction of the same shall be final.

(c) With the consent in writing of a majority in interest of the holders of the trust certificates outstanding at the time, the Committee may take any action other than, and in addition to, such as is provided for in this agreement, which the Committee shall unanimously determine to be for the benefit of the Bondholders.

(d) The Committee shall, also, have power, whenever it may think proper, to abandon this agreement, or any plan, or reorganization adopted by it; and, in case this agreement is abandoned by the Committee, the bonds and coupons deposited hereunder shall be returned to the holders upon payment, within the limit hereinbefore provided, of their *pro rata* share of the expenses incurred.

12. The Committee and its members shall not be liable for the act of any agent, or attorney, selected with reasonable discretion; nor shall any member of the Committee be liable for the acts of any other member, nor for anything but his own wilful misconduct. It is expressly understood that the Committee assumes no responsibility for the execution of this agreement, or the plan to be adopted hereunder; but the members undertake, in good faith, to endeavor to execute the same.

13. (a) In case the mortgaged property shall be sold under foreclosure and shall be purchased by the Committee, or in case the Railway Company shall be reorganized by the Committee without foreclosure, then, and in either of such events, the said Committee shall render to the President of the new or reorganized corporation an account, in which shall be included the expenses of said Committee and the reasonable compensation of its members; and the audit of said account by such President shall be final and conclusive on the certificate holders and on the Committee.

(b) In case the mortgaged property shall be sold, but shall not be purchased by the Committee, the said account shall be rendered to the President of the Doe Trust Company, and the audit of such account by the President, shall, in like manner, be final and conclusive on the certificate holders and on the Committee. The account, in case of the audit by the President of the Doe Trust Company, shall include a reasonable compensation to the auditor.

14. This agreement shall extend to, and be obligatory upon, the respective executors, administrators, successors and assigns of the parties hereto.

15. This agreement may be duplicated; and all copies thereof, although separately signed, shall be deemed and taken together as constituting one original agreement.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals, the day and year first above written.

John Smith (L.S.),

James Green (L.S.),

James Doe (L.S.),

Bondholders.

Richard Roe (L.S.),

Henry Koe (L.S.),

Thomas Koe (L.S.),

Committee.

In the presence of
John Jones.

CHAPTER VII

GRANTOR AND GRANTEE

Section 1.—Deeds.

- No. 142—Bargain and sale deed by corporation, with covenant against grantor—statutory form.
- No. 143—Bargain and sale deed by corporation, without covenants against grantor—statutory form.
- No. 144—Bargain and sale deed by individual, with covenant against grantor—statutory form.
- No. 145—Bargain and sale deed by individual, without covenants against grantor—statutory form.
- No. 146—Deed with full covenants by corporation—statutory form.
- No. 147—Deed with full covenants by an individual—statutory form.
- No. 148—Executor's deed—statutory form.
- No. 149—Mining claim deed.
- No. 150—Quitclaim deed by corporation—statutory form.
- No. 151—Quitclaim deed by individual—statutory form.
- No. 152—Referee's deed in foreclosure—statutory form.
- No. 153—Referee's deed in partition—statutory form.

Section 2.—Miscellany.

(A).—Conditions.

- No. 154—Condition terminating estate, upon grantee's failure to erect a church, with reservation of place of interment.
- No. 155—Condition terminating estate, upon grantee's failure to erect and maintain city hall.

(B).—Covenants.

- No. 156—Agreement by neighboring property owners, restricting the erection of buildings on their properties.

- No. 157—Covenant to assume mortgage.
No. 158—Covenant to erect building, within a specified time.
No. 159—Covenant to erect dwelling house only.
No. 160—Covenant not to erect any building other than private dwelling of specified height.
No. 161—Covenant not to erect building, within specified distance.
No. 162—Same—another form.
No. 163—Covenant not to erect particular class of houses, nor use the property for any specified objectionable purpose.

(C).—Reservations.

- No. 164—Reservation by grantor of right to damage to fee caused by railroad.
No. 165—Reservation by grantor of right to damage, past, present and future, caused by railroad.
No. 166—Reservation by grantor of right to grade property.
No. 167—Reservation by grantor of right to lay pipes and conduits.
No. 168—Same—another form.
No. 169—Reservation by grantor of life estate, with grant of life estate to each of two others in undivided half of property, subject to his own life estate, and grant of remainder, subject to such life estate.
No. 170—Reservation by grantor of right of maintenance for life.

SECTION 1.—DEEDS

No. 142.

Bargain and sale deed by corporation, with covenant against grantor—statutory form.¹

THIS INDENTURE, made the 5th day of January, nineteen hundred and twenty-three, between John Doe, Inc., a corporation organized under the laws of the State of New York, and having its principal office at No. 111½ Broadway, Borough of Manhattan, New York City, party of the first part, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten thousand (\$10,000) dollars, lawful money of the United

¹ Adapted from *New York Laws* (1917), Ch. 681, Schedule F.

States, paid by the party of the second part, does hereby grant and release, unto the party of the second part, his heirs and assigns forever, all that certain lot, piece or parcel of land, with the buildings thereon erected, situate, lying and being in the Borough of Manhattan, City of New York, and bounded and described, as follows:

BEGINNING * * *

together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, his heirs and assigns forever. And the party of the first part covenants that it has not done or suffered anything whereby the said premises have been encumbered in any way whatever.

IN WITNESS WHEREOF, the party of the first part has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officer, the day and year first above written.

John Doe, Inc.,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

No. 143.

Bargain and sale deed by corporation, without covenants against grantor—statutory form.²

THIS INDENTURE, made the 5th day of January, nineteen hundred and twenty-three, between John Doe, Inc., a corporation organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City, party of the first part, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, party of the second part,

WITNESSETH, that the party of the first part, in consideration of five thousand (\$5,000) dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release, unto the party of the second part, his heirs and assigns forever, all

² Adapted from *New York Laws* (1917), Ch. 681, Schedule D.

that certain lot, piece or parcel of land, with the buildings thereon erected, situate, lying and being in the Borough of Manhattan, City of New York, and bounded and described, as follows:

BEGINNING * * *

together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the party of the first part has hereunto caused its corporate seal to be affixed, and these presents to be signed by its duly authorized officer, the day and year first above written.

John Doe, Inc.,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

No. 144.

Bargain and sale deed by individual, with covenant against grantor—statutory form.³

THIS INDENTURE, made the 5th day of January, nineteen hundred and twenty-three, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, party of the first part, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten thousand (\$10,000) dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release, unto the party of the second part, his heirs and assigns forever, all that certain lot, piece or parcel of land, with the buildings thereon erected, situate, lying and being in the Borough of Manhattan, City of New York, and bounded and described, as follows:

BEGINNING * * *

together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, his heirs and assigns forever.

³ Adapted from *New York Laws* (1917), Ch. 681, Schedule E.

And the party of the first part covenants that he has not done or suffered anything whereby the said premises have been encumbered in any way whatever.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal, the day and year first above written.

John Doe (L.S.).

In the presence of

John Jones.

No. 145.

Bargain and sale deed by individual, without covenants against grantor—statutory form.⁴

THIS INDENTURE, made the 5th day of January, nineteen hundred and twenty-three, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, party of the first part, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten thousand (\$10,000) dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release, unto the party of the second part, his heirs and assigns forever, all that certain lot, piece or parcel of land, with the buildings thereon erected, situate, lying and being in the Borough of Manhattan, City of New York, and bounded and described as follows:

BEGINNING * * *

together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal, the day and year first above written.

John Doe (L.S.).

In the presence of

John Jones.

No. 146.

Deed with full covenants by corporation—statutory form.⁵

THIS INDENTURE, made the 5th day of January, nineteen hundred and twenty-three, between John Doe, Inc., a corporation, or-

⁴ Adapted from *New York Laws* (1917), Ch. 681, Schedule C.

⁵ Adapted from *New York Laws* (1917), Ch. 681, Schedule B.

ganized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City, party of the first part, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, party of the second part,

WITNESSETH, that the party of the first part, in consideration of five thousand (\$5,000) dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release, unto the party of the second part, his heirs and assigns forever, all that certain lot, piece or parcel of land, with the buildings thereon erected, situate, lying and being in the Borough of Manhattan, City of New York, and bounded and described, as follows:

BEGINNING * * *

together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, his heirs and assigns forever. And the party of the first part covenants, as follows:

FIRST: That the party of the first part is seized of said premises in fee simple, and has good right to convey the same.

SECOND: That the party of the second part shall quietly enjoy the said premises.

THIRD: That the said premises are free from encumbrances.

FOURTH: That the party of the first part will execute or procure any further necessary assurances of the title to said premises.

FIFTH: That the party of the first part will forever warrant the title to said premises.

IN WITNESS WHEREOF, the party of the first part has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officer, the day and year first above written.

John Doe, Inc.,

By John Doe,

President.

(Seal)

Attest:

John Jones,

Secretary.

No. 147.

Deed with full covenants by an individual—statutory form.⁶

THIS INDENTURE, made the 5th day of January, nineteen hundred and twenty-three, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, party of the first part, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, party of the second part,

WITNESSETH, that the party of the first part, in consideration of five thousand (\$5,000) dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release, unto the party of the second part, his heirs and assigns forever, all that certain lot, piece or parcel of land, with the buildings thereon erected, situate, lying and being in the Borough of Manhattan, City of New York, and bounded and described as follows:

BEGINNING * * *

together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, his heirs and assigns forever. And the said party of the first part covenants as follows:

FIRST: That said party of the first part is seized of said premises in fee simple, and has good right to convey the same.

SECOND: That the party of the second part shall quietly enjoy the said premises.

THIRD: That the said premises are free from encumbrance.

FOURTH: That the party of the first part will execute or procure any further necessary assurances of the title to said premises.

FIFTH: That said party of the first part will forever warrant the title to said premises.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal, the day and year first above written.

John Doe (L.S.).

In the presence of
John Jones.

⁶ Adapted from *New York Laws* (1917), Ch. 681, Schedule A.

No. 148.

Executor's deed—statutory form.⁷

THIS INDENTURE, made the 5th day of January, nineteen hundred and twenty-three, between John Doe as executor of Henry Koe under the last will and testament of Henry Koe, late of the Borough of Manhattan, City and County of New York, party of the first part, and Richard Roe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, party of the second part,

WITNESSETH, that the party of the first part, by virtue of the power and authority to him given in and by the said last will and testament, and in consideration of ten thousand (\$10,000) dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release, unto the party of the second part, his heirs and assigns forever, all that certain lot, piece or parcel of land, with the buildings thereon erected, situate, lying and being in the Borough of Manhattan, City of New York, and bounded and described, as follows:

BEGINNING * * *

together with the appurtenances, and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein, which the party of the first part has or has power to convey or dispose of, whether individually, or by virtue of said will or otherwise.

To HAVE AND TO HOLD the premises herein granted unto the party of the second part, his heirs and assigns forever.

And the party of the first part covenants that he has not done anything whereby the said premises have been encumbered in any way whatever.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal, the day and year first above written.

John Doe (L.S.),

As executor of Henry Koe
under the last will and tes-
tament of Henry Koe,
deceased.

In the presence of
John Jones.

⁷ Adapted from *New York Laws* (1917), Ch. 681, Schedule I.

No. 149.

Mining claim deed.⁸

THIS INDENTURE, made January 5, 1923, between Doe Mining Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

That the First Party, for and in consideration of the sum of one (\$1) dollar, lawful money of the United States, and other valuable consideration, to it in hand paid, the receipt of which is hereby acknowledged, has bargained, sold, conveyed, remised, released and forever quitclaimed, and does by these presents bargain, sell, convey, remise, release and forever quitclaim, unto the Second Party, his heirs and assigns forever, all the right, title and interest, estate, claim and demand of the First Party in and to the following described property, mining claims and mining rights, situated in Bou County, State of Montana, and more particularly described, as follows:

The certain quartz lode mining claim, known as the "White Rock" quartz lode mining claim, designated as Lot No. 5A Mineral Survey No. 596, in Township X, N.R.W.

Together with all dips, spurs and angles, and, also, all the metals, ores, gold, silver and metal bearing quartz, rock, and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and, also, all the estate, right, title, interest, possession, claim and demand whatsoever of the said First Party, of, in, or to the said premises, including the surface, and every part and parcel thereof.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said Second Party, his heirs and assigns forever.

IN WITNESS WHEREOF, the First Party has signed this instrument, by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary,

⁸ Adapted from *Butte & Superior Mining Co. v. Clark-Montana Realty Co.* (1918), 249 U. S. 12, 39 Sup. Ct. Rep. 231, 63 Law ed. 447.

and the Second Party has hereunto set his hand and seal, the day and year first above written.

Doe Mining Co., Inc.,

By John Doe,

President.

(Seal)

Attest:

John Jones,

Secretary.

Richard Roe (L.S.).

No. 150.

Quitclaim deed by corporation—statutory form.⁹

THIS INDENTURE, made the 5th day of January, nineteen hundred and twenty-three, between John Doe, Inc., a corporation, organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City, party of the first part, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten thousand (\$10,000) dollars, lawful money of the United States, paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, his heirs and assigns forever, all that certain lot, piece or parcel of land, with the buildings thereon erected, situate, lying and being in the Borough of Manhattan, City of New York, and bounded and described, as follows:

BEGINNING * * *

together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the party of the first part has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officer the day and year first above written.

John Doe, Inc.,

By John Doe,

President.

(Seal)

Attest:

John Jones,

Secretary.

⁹ Adapted from *New York Laws* (1917), Ch. 681, Schedule H.

No. 151.**Quitclaim deed by individual—statutory form.¹⁰**

THIS INDENTURE, made the 5th day of January, nineteen hundred and twenty-three, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, party of the first part, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten thousand (\$10,000) dollars, lawful money of the United States, paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, his heirs and assigns forever, all that certain lot, piece or parcel of land, with the buildings thereon erected, situate, lying and being in the Borough of Manhattan, City of New York, and bounded and described, as follows:

BEGINNING * * *

together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To HAVE AND TO HOLD the premises herein granted unto the party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the party of the first part has hereunto set his **hand** and seal, the day and year first above written.

John Doe (L.S.).

In the presence of

John Jones.

No. 152.**Referee's deed in foreclosure—statutory form.¹¹**

THIS INDENTURE, made the 5th day of January, nineteen hundred and twenty-three, between John Doe, referee duly appointed in the action hereinafter mentioned, grantor, and Richard Roe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, grantee:

WITNESSETH, that the grantor, the referee appointed in an action between Henry Koe and Thomas Koe, plaintiffs, and John Smith

¹⁰ Adapted from *New York Laws* (1917), Ch. 681, Schedule G.

¹¹ Adapted from *New York Laws* (1917), Ch. 681, Schedule J.

and Jane Smith, defendants, for foreclosing a mortgage recorded on the 5th day of January, 1921, in the office of the register of the county of New York, in liber 97A of mortgages, at page 333, in pursuance of a judgment entered at a special term of the Supreme Court, New York County, on the 5th day of December, 1922, and in consideration of ten thousand (\$10,000) dollars paid by the grantee, being the highest sum bid at the sale under said judgment, does hereby grant and convey unto the grantee, all that certain lot, piece or parcel of land, with the buildings thereon erected, situate, lying and being in the Borough of Manhattan, City of New York, and bounded and described, as follows:

BEGINNING * * *

TO HAVE AND TO HOLD the premises herein granted unto the grantee, his heirs and assigns forever.

IN WITNESS WHEREOF, the grantor has hereunto set his hand and seal.

John Doe (L.S.).

In the presence of
John Brown.

No. 153.

Referee's deed in partition—statutory form.¹²

THIS DEED, made the 5th day of January, nineteen hundred and twenty-three, between John Doe, referee duly appointed in the action hereinafter mentioned, grantor, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, grantee:

WITNESSETH, that the grantor, the referee appointed in an action in partition between Henry Koe and Thomas Koe, plaintiffs, and John Smith, defendant, in pursuance of a judgment entered at a special term of the Supreme Court, New York County, on the 5th day of December, 1922, and in consideration of ten thousand (\$10,000) dollars paid by the grantee, being the highest sum bid at the sale under said judgment, does hereby grant and convey unto the grantee, all that certain lot, piece or parcel of land, with the buildings thereon erected, situate, lying and being in the Borough of Manhattan, City of New York, and bounded and described, as follows:

¹² Adapted from *New York Laws* (1917), Ch. 681, Schedule K.

BEGINNING * * *

TO HAVE AND TO HOLD the premises herein granted unto the grantee, his heirs and assigns forever.

IN WITNESS WHEREOF, the grantor has hereunto set his hand and seal.

John Doe (L.S.).

In the presence of
John Jones.

SECTION 2.—MISCELLANY.

(A).—Conditions.

No. 154.

Condition terminating estate, upon grantee's failure to erect a church, with reservation of place of interment.¹³

TO HAVE AND TO HOLD the above granted, bargained and described premises, with the appurtenances, unto the said second party, his heirs, and assigns, to his and their proper use, benefit and behoof forever, upon the condition following, to wit: That said second party shall consecrate, or cause to be consecrated, the said property, for the purpose of erecting a church building thereon, and shall, within a reasonable time, erect such a building thereon, or cause the same to be erected.

And reservation is hereby made by said first party to appropriate, at her option, either out of the ground under such building or outside thereof, and within the boundaries of the property hereby conveyed, a sufficient place of interment, or burial, for her late husband, now deceased, her family and herself, and to erect a suitable tablet, or monument, to their memory.

No. 155.

Condition terminating estate, upon grantee's failure to erect and maintain city hall.¹⁴

That said plot of land shall be used by the second party for the purpose of building a city hall thereon, and this conveyance is

¹³ Adapted from *Upington v. Corrigan* (1896), 151 N. Y. 143, 45 N. E. 359, 37 L. R. A. 794.

¹⁴ Adapted from *Trustees of Union College v. City of N. Y.* (1903), 173 N. Y. 38, 65 N. E. 853, 93 Am. St. Rep. 569.

made upon the express condition that, in case the said plot of ground shall not be used by the second party for the purpose of building a city hall thereon, or if the said plot of land shall ever cease to be used by the second party for a city hall, then, and in any such event, the said plot of land shall revert to the first party, as if this conveyance had not been made.

(B).—Covenants.

No. 156.

Agreement by neighboring property owners, restricting the erection of buildings on their properties.¹⁵

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, and Henry Koe, residing at No. 57½ Broadway, Borough of Manhattan, New York City, WITNESSETH:

WHEREAS, the several parties hereto are owners in fee simple of divers lots and parcels of ground, situated in the Eighteenth Ward of the City of New York, lying on each side of Thirty-fourth Street, Thirty-fifth Street and Thirty-Seventh Street, and on the south side of Thirty-eighth Street, lying between Madison Avenue on the westerly side, and Lexington Avenue on the easterly side, and, also, on Madison Avenue, Lexington Avenue and Fourth Avenue, as the same are particularly laid down on a Map in the office of the register in and for the county of New York, entitled "Map of Murray Hill," made by Henry Smith, City Surveyor, February 25, 1920:

NOW, THEREFORE, THE SEVERAL PARTIES HERETO, EACH OF THEM IN CONSIDERATION OF THE COVENANTS AND AGREEMENTS OF THE OTHERS HEREIN CONTAINED, AND OF THE SUM OF ONE (\$1) DOLLAR TO EACH IN HAND PAID BY THE OTHERS, THE RECEIPT WHEREOF IS HEREBY SEVERALLY ACKNOWLEDGED, HAVE COVENANTED, BARGAINED AND AGREED, AND EACH OF THEM, BY THESE PRESENTS, DOES COVENANT, BARGAIN AND AGREE, WITH THE OTHERS, AND WITH EACH OF THE OTHERS, AND EACH FOR HIMSELF, HIS HEIRS AND ASSIGNS DOES COVENANT, BARGAIN AND AGREE WITH THE OTHERS,

¹⁵ Adapted from *Reformed P. D. Church v. M. A. Building Co.* (1915), 214 N. Y. 268, 108 N. E. 444.

THEIR HEIRS AND ASSIGNS, AND WITH EACH OF THE OTHERS, HIS HEIRS AND ASSIGNS, AS FOLLOWS:

1. That none of the several parties hereto, nor his heirs, or assigns, shall, or will, at any time hereafter, erect, or cause to be erected, upon any of the lots owned by them, respectively, or any part of the same, any building, or erection, other than a brick, or stone, dwelling house of at least two stories in height, and with the ordinary yard appurtenances to dwelling houses, and except churches and stables of brick, or stone, for private dwelling, and, further, that they will not hereafter erect, or permit, upon such lot, or any part of the same, any livery stable, slaughter house, smith shop, forge, furnace, steam engine, brass foundry, nail, or other iron, factory, or any manufacture of gunpowder, glue, varnish, vitriol, ink, or turpentine or for the tanning, dressing or preparation of skins, hides, or leather, or any brewery, distillery, museum, theatre, circus, place for the exhibition of wild animals, or any other erection known as nuisance in the law.

2. It is further covenanted and agreed that the above covenants shall be deemed, and taken to be, covenants running with the land.

3. That, in case of any violation, or attempted violation, of any of the covenants herein contained by any of the parties hereto, his, her, or their, heirs and assigns, a bill may be filed by any one, or more, of the other parties, their, or his, heirs, executors, or assigns, to obtain a perpetual injunction against the same.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

Henry Koe (L.S.).

In the presence of

John Jones.

No. 157.

Covenant to assume mortgage.¹⁶

This conveyance is made subject to two certain mortgages, each for five thousand (\$5,000) dollars, with interest on each at the rate of five (5%) per cent, from December 10, 1922, which the second party hereby assumes and agrees to pay.

¹⁶ Adapted from *Schley v. Frycn* (1885), 100 N. Y. 71, 4 N. E. 104.

No. 158.**Covenant to erect building, within a specified time.¹⁷**

That the second party shall, within one year from the date hereof, erect, build and complete on said land a substantial two-story dwelling house, to cost not less than ten thousand (\$10,000) dollars.

No. 159.**Covenant to erect dwelling house only.¹⁸**

That the land herein granted shall be used for residential purposes only, and that no building or structure of any kind whatsoever other than a dwelling house shall be erected thereon.

No. 160.**Covenant not to erect any building other than private dwelling of specified height.¹⁹**

That the second party, his heirs or assigns, shall not at any time hereafter erect, or cause, or suffer, or permit to be erected, upon the hereby granted premises, or any part thereof, any building other than a brick or stone private dwelling house, not less than three stories in height.

No. 161.**Covenant not to erect building, within specified distance.²⁰**

This conveyance is made and taken by the grantee with the express understanding and agreement that any and all dwellings erected on the land hereby conveyed shall be erected not nearer than twenty-five feet to the front street line of the lot.

¹⁷ Adapted from *Hurley v. Brown* (1899), 44 App. Div. 480, 60 N. Y. Supp. 846.

¹⁸ Adapted from *Hepburn v. Long* (1911), 146 App. Div. 527, 131 N. Y. Supp. 154.

¹⁹ Adapted from *Pagenstecher v. Carlson* (1911), 146 App. Div. 738, 131 N. Y. Supp. 413.

²⁰ Adapted from *McDonald v. Spang* (1907), 55 Misc. 332, 105 N. Y. Supp. 617, 20 N. Y. Anno. Cas. 68.

No. 162.**Same—another form.²¹**

That no building whatsoever shall be erected, within five (5) feet of the front of any of said lots.

No. 163.**Covenant not to erect particular class of houses, nor use the property for any specified objectionable purpose.²²**

Subject, however, to the following covenants and restrictions, which shall be taken to be real covenants running with the land and binding upon the second party, his heirs, executors, administrators, and assigns, for a term of twenty years, from the 5th day of January, 1923, viz.:

That neither said vendee nor his heirs, assigns, or undertenants, shall, or will, erect, or suffer, or permit, to be erected upon any part of said land hereby conveyed, any public bathing house, slaughter house, blacksmith shop, forge, foundry, or furnace, or any factory of any kind or nature, whatsoever, or tannery, or other factory for the manufacture, preparation, or treatment of skins, hides, or leather, or any brewery, malt house, or distillery, or any building, booth, or other structure, for the manufacture, or sale of any malt or spirituous or distilled liquors or drinks of any description, or to be used as a livery stable, or for the carrying on of any noxious, dangerous, or offensive trade, or business, or any building of the character, or description, known as a tenement house, hotel, or boarding house, or any barn, or stable, whatsoever, or for the giving of shows or public entertainments of any kind, and that neither he, nor they, will give, or permit to be given, upon said land, any shows, concerts, theatrical or musical performances, or any entertainment whatever of a public character, whether accompanied by music or not, which attracts, or is calculated to attract, divert, or collect, a congregation of persons, and that neither he, nor they, shall, or will, use, or suffer, or permit, to be used, erected, or commenced, any building or structure, erected,

²¹ Adapted from *Grout v. Zapfe* (1920), 113 Misc. 365, 184 N. Y. Supp. 498.

²² Adapted from *Sullivan v. Sprug* (1915), 170 App. Div. 237, 156 N. Y. Supp. 332.

or to be erected, on said premises, for any of the above mentioned and prohibited purposes, businesses, or uses, nor for any hospital, cemetery, asylum, manufactory, trade, shop, store, hotel, club house, boarding house, stable or garage.

(C).—Reservations

No. 164.

Reservation by grantor of right to damage to fee caused by railroad.²³

The first party, nevertheless, expressly reserves to himself, and excepts from this conveyance, any and all rights, damages, and claims against the Doe Central and Hudson River Railroad Company and any other person or corporation whatsoever for the erection, construction and maintenance or use of any structure or raised way or railroad track on Jones Avenue opposite the premises hereby conveyed.

No. 165.

Reservation by grantor of right to damages, past, present and future, caused by railroad.²⁴

The first party hereby reserves all claim or right of action against the Doe Railroad Company, for any and all injury or damage done to the aforesaid property, or to the value, or uses thereof, in the past, present or future, by reason of the construction and operation of the elevated railroad in front of the said premises, and as the same is now constructed and operated.

No. 166.

Reservation by grantor of right to grade and improve property.²⁵

The first party hereby reserves to itself, its successors and assigns, the right of raising the grade of the aforesaid property to

²³ Adapted from *Wehrenberg v. Seiferd* (1908), 125 App. Div. 527, 109 N. Y. Supp. 896.

²⁴ Adapted from *Western Union Telegraph Co. v. Shepard* (1901), 169 N. Y. 170, 62 N. E. 154, 58 L. R. A. 115.

²⁵ Adapted from *Strauss v. Estates of Long Beach* (1919), 187 App. Div. 876, 176 N. Y. Supp. 447.

the general level of surrounding property; and of having its agents, servants and employes cross and re-cross the aforesaid property with pipes, machinery, etc., for a reasonable time, to complete the improvements upon the aforesaid property and the surrounding property.

No. 167.

Reservation by grantor of right to lay pipes and conduits.²⁶

The first party hereby reserves to itself, its successors and assigns, the right of laying under said property, at any time, pipes and conduits for sewers, electric lights, telephone and gas.

No. 168.

Same—another form.²⁷

The first party hereby reserves to itself, its successors and assigns, the right to lay, beneath the surface of the soil of the aforesaid property, at the end of the lots hereby conveyed, within three feet from the end of the same, gas, water and sewer pipes, or electric light or power fixtures.

No. 169.

Reservation by grantor of life estate, with grant of life estate to each of two others in undivided half of property, subject to his own life estate, and grant of remainder, subject to such life estate.²⁸

TO HAVE AND TO HOLD the above granted and described premises with the appurtenances unto Jane Doe and Mary Doe, from and after the death of the said first party, as tenants in common during their respective lives, and, at the death of either of them, to the said John Doe, his heirs and assigns as to the share or undivided half of the one so dying, to his or their own proper use and behoof forever.

²⁶ Adapted from *Strauss v. Estates of Long Beach* (1917), 187 App. Div. 876, 176 N. Y. Supp. 447.

²⁷ Adapted from *Coyne v. Valley Stream Realty Co.* (1916), 219 N. Y. 609, 114 N. E. 1063.

²⁸ Adapted from *Partenfelder v. People* (1914), 211 N. Y. 355, 105 N. E. 675.

No. 170.**Reservation by grantor of right of maintenance for life.²⁹**

The said first party hereby reserves to herself the right of her comfortable maintenance upon the within described premises in the family of the second party, during her natural life, and the second party shall not sell, or convey, the said within described premises, during the natural life of the said first party, without her consent.

²⁹ Adapted from *Tacker v. Tacker* (1907), 122 App. Div. 308, 106 N. Y. Supp. 713.

CHAPTER VIII

GUARANTOR AND GUARANTEE

Section 1.—Absolute Guaranties.

- No. 171—Absolute guaranty of payment of account.
- No. 172—Absolute guaranty of payment of mortgage.
- No. 173—Absolute guaranty of payment of part of note.
- No. 174—Absolute guaranty of payment of promissory notes and renewals thereof.
- No. 175—Absolute guaranty of performance of award of arbitrators.
- No. 176—Absolute guaranty of performance of contract.
- No. 177—Absolute guaranty of performance of lease.
- No. 178—Absolute guaranty by stockholders of contract made by their corporation, with pledge of stock as security.

Section 2.—Conditional Guaranties.

- No. 179—Conditional guaranty of lease, which will include term of renewal, under option exercised by tenant.
- No. 180—Conditional guaranty of payment of negotiable instruments, subject to demand.
- No. 181—Conditional guaranty, whereunder seller of stock guarantees specific return to buyer.

Section 3.—Continuing Guaranties.

- No. 182—Continuing guaranty of performance by buyers of contract of sale.
- No. 183—Continuing guaranty of performance of contract of employment.

SECTION 1.—ABSOLUTE GUARANTIES.

No. 171.

Absolute guaranty of payment of account.¹

KNOW ALL MEN, that, in consideration of the making of a contract between Richard Roe and the Koe Electric Company, for the supply of electric current, and for value received, I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, hereby guaranty to the said Koe Electric Company the payment of the account of the said Richard Roe, and I hereby waive notice of the non-payment of the said account by the said Richard Roe and of failure of the collection of same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

No. 172.

Absolute guaranty of payment of mortgage.²

KNOW ALL MEN; that,—

WHEREAS, John Doe heretofore executed and delivered to me a certain mortgage in the sum of fifty thousand (\$50,000) dollars, dated January 4, 1922, and recorded in the office of the register of the county of New York on January 5, 1922, in liber 275A, page 386, of Mortgages; and

WHEREAS, I, Richard Roe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, am about to assign all my right, title and interest in said mortgage to Henry Koe, residing at No. 37½ Broadway, Borough of Manhattan, New York City:

NOW, THEREFORE, I, the said Richard Roe, in consideration of the said Henry Koe accepting such assignment of said mortgage, do hereby guaranty to the said Henry Koe the payment of the amount of said mortgage.

¹ Cf. *Voorhees v. Porter* (1904), 134 N. C. 591, 47 S. E. 31, 65 L. R. A. 736.

² Adapted from *Pfeiffer v. Crossley* (1918), 91 N. J. L. 433, 103 Atl. 1000.

IN WITNESS WHEREOF, I have hereunto set my hand and seal,
this 5th day of January, 1923.

Richard Roe (L.S.).

In the presence of
John Jones.

No. 173.

Absolute guaranty of payment of part of note.³

KNOW ALL MEN, that, in consideration of the loan by The Doe Trust Company to the Koe Company, a corporation, duly organized under the laws of the State of New York, and in further consideration of one (\$1) dollar to me in hand paid by the Doe Trust Company, and other good and valuable considerations, the receipt whereof is hereby acknowledged, I, the undersigned, do hereby guaranty to the said The Doe Trust Company, the punctual payment, at maturity, of a certain promissory note, dated January 5, 1923, for the principal sum of five thousand (\$5,000) dollars, with interest at the rate of six per cent per annum, to be made, executed and delivered by the said Koe Company to the said The Doe Trust Company, together with all legal and other expenses of collection; and I hereby expressly waive presentment for payment, notice of presentment and of non-payment, protest and notice of protest of said note, and consent that the time for the payment thereof may be extended, without notice to, or further consent from me.

Dated, New York, January 5, 1923.

Richard Roe (L.S.).

In the presence of
John Jones.

No. 174.

Absolute guaranty of payment of promissory notes and renewals thereof.⁴

KNOW ALL MEN, that—

WHEREAS, the Doe National Bank, of New York City, at my special instance and request, has loaned to Koe Co., Inc., a cor-

³ Adapted from *National Surety Co. v. Seach* (1916), 171 App. Div. 414, 157 N. Y. Supp. 442.

⁴ Adapted from *First National Bank v. Jones* (1916), 219 N. Y. 312, 114 N. E. 1067.

poration, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City, certain sums of money, aggregating the sum of ten thousand (\$10,000) dollars; and

WHEREAS, the said Doe National Bank, of New York City, holds the promissory notes of the Koe Co., Inc., for such loans, which notes are payable at various times; and

WHEREAS, the Doe National Bank, of New York City, at my special instance and request, has loaned to Henry Koe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, certain sums of money, aggregating the sum of ten thousand (\$10,000) dollars; and

WHEREAS, the said Doe National Bank, of New York City, holds the promissory notes of the said Henry Koe, for such loans, which notes have been endorsed by the Koe Co., Inc., and are payable at various times:

NOW, THEREFORE, I, John Doe, residing at No. 57½ Broadway, Borough of Manhattan, New York City, hereby covenant and agree with the said Doe National Bank, of New York City, to guaranty, and I do hereby guaranty, the full and prompt payment of all of the said notes, aggregating the sum of twenty thousand (\$20,000) dollars, and of any and all renewals thereof, or of any of them, when the same shall become due and payable, until all of said loans and notes, and any and all renewals thereof, are fully paid and discharged.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones.

No. 175.

Absolute guaranty of performance of award of arbitrators.⁵

KNOW ALL MEN, that, in consideration of the Doe Rattan & Reed Manufacturing Co., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City, entering into a contract with John Doe, residing at No. 37½

⁵ Adapted from *American Rattan & Reed Mfg. Co. v. Cone* (1921), 198 App. Div. 843, 190 N. Y. Supp. 782.

Broadway, Borough of Manhattan, New York City, to purchase one hundred (100) tons of rattan, which contract is dated January 5, 1923, I, Richard Roe, residing at No. 57½ East 57th Street, Borough of Manhattan, New York City, hereby guaranty, as a direct and primary obligation upon my part, the performance by the said John Doe of the terms of any award that may be made in any arbitration held under, or by virtue of, the provisions of said contract.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

Richard Roe (L.S.).

In the presence of
John Jones.

No. 176.

Absolute guaranty of performance of contract.*

KNOW ALL MEN, that, in consideration of the execution of the within agreement by the parties thereto, and of the sum of one (\$1) dollar paid to me by the Roe Company, the receipt whereof is hereby acknowledged, I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, do hereby guaranty, promise and agree to and with the said Roe Company, its successors and assigns, that the within named John Koe, his representatives and assigns, will faithfully perform and fulfill everything in the within agreement on his or their part or parts to be performed or fulfilled, at the times and in the manner therein provided, and will fully and promptly pay for the goods, wares and merchandise to him sold thereunder; and I hereby waive any demand by the said Roe Company, its successors and assigns, as well as any notice of non-performance or non-payment by the said John Koe.

Dated, New York, January 5, 1923.

John Doe (L.S.).

In the presence of
John Jones.

[Annex Contract Guaranteed.]

* Adapted from *Stemmerman v. Kelly* (1917), 220 N. Y. 756, 116 N. E. 1077.

No. 177.

Absolute guaranty of performance of lease.⁷

KNOW ALL MEN that—

In consideration of the letting of the premises within mentioned to the within named Tenant, and of the sum of one (\$1) dollar to me in hand paid by the said Landlord, I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City, do hereby covenant and agree, to and with said Landlord, his legal representatives and assigns, that, if default shall, at any time, be made by the Tenant in the payment of the rent, or in the performance of the covenants contained in the within lease on the Tenant's part to be paid and performed, or should the Landlord, his legal representatives or assigns institute summary proceedings or any other action or proceedings for the recovery of the possession of said premises, by reason of the non-payment of the rent or otherwise, that I will, upon demand, well and truly pay the said rent or any arrears thereof, or any other sum or sums provided to be paid by the Tenant under any of the terms of the within lease, that may remain due unto the said Landlord, his legal representatives or assigns, or that may become due, and any and all damages that may arise in consequence of the non-performance of said covenants, or any of them, without requiring notice of any such default from the said Landlord, his legal representatives and assigns, and without requiring any proceedings to be taken against said Tenant for the collection of such amount or amounts.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones.

[Annex Lease Guarantied.]

⁷ Adapted from *Lindenberg Corporation v. Howland* (1921), 115 Misc. 244, 187 N. Y. Supp. 917.

No. 178.

Absolute guaranty by stockholders of contract made by their corporation, with pledge of stock as security.⁸

THIS AGREEMENT, made January 5, 1923, between Doe Company, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), John Doe and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Parties"), and Henry Koe, residing at No. 37½ East 37th Street, Borough of Manhattan, New York City (herein called the "Third Party"), WITNESSETH:

WHEREAS, the Second Parties are desirous of inducing the First Party to enter into a certain contract with a domestic corporation known as Smith Woolen Co., dated January 5, 1923; and

WHEREAS, the First Party is unwilling to enter into said contract, without security for the full and faithful performance thereof on the part of the said Smith Woolen Co.,:

NOW, THEREFORE, in consideration of the guaranty hereinafter set forth, the parties hereto hereby agree, as follows:

1. That simultaneously with the execution of this agreement, the First Party will enter into, and become a party to, a certain contract with the said Smith Woolen Co., a copy of which, marked "Exhibit A" is hereto annexed and made a part hereof.

2. That the said Second Parties, both severally, individually, and jointly, hereby guaranty unto the First Party the full and faithful performance of any and all covenants and conditions imposed on the Smith Woolen Co., by the contract between the said Smith Woolen Co., and the First Party, dated the 5th day of January, 1923, a copy of which is hereto annexed, marked "Exhibit A," and waive notice of any breach in the performance on the part of the said Smith Woolen Co.; it being agreed that this guaranty shall continue until any and all claims which the said First Party may have against the said Smith Woolen Co., shall have been settled and discharged in full.

3. That, as security for their agreement, the Second Parties do

⁸ Adapted from *Ludvig v. American Woolen Co.* (1913), 231 U. S. 522, 34 Sup. Ct. Rep. 161, 58 Law ed. 345.

hereby sell, transfer, assign and set over unto the Third Party one hundred (100) shares of stock of the Smith Woolen Co.;

TO HAVE AND TO HOLD the same, for the full term of one year from the date hereof, upon the following terms, conditions and trusts:

(a) To vote the same at all meetings of the stockholders of the said Smith Woolen Co., as the First Party shall direct, except that, so long as the conditions and covenants of this contract shall be kept and observed by the Second Parties and so long as the said contract between the First Party and the said Smith Woolen Co., shall be fully kept and observed by the said Smith Woolen Co., to vote the same for such person as president of the said Smith Woolen Co., as the Second Parties may designate; and

(b) So long as the conditions and covenants of the aforesaid two contracts shall be kept and observed by the respective Second Parties thereto, not to vote to dissolve the said Smith Woolen Co., during the first year of its existence; and

(c) Otherwise, at all such meetings, to do and to act in regard to the same, as fully and effectually as the Second Parties might do, if personally present at such meeting and said shares of stock stood in the name of the said Second Parties; and

(d) So long as the said Smith Woolen Co., shall faithfully perform and discharge all its obligations under the said contract hereto annexed, or, in case of a failure by the said Smith Woolen Co., faithfully to perform the said contract hereto annexed, so long as the said Second Parties faithfully perform this contract of guaranty, to collect and receive the dividends on the said one hundred (100) shares and to pay over such dividends to the Second Parties; and

(e) In case of a breach of performance on the part of either the said Smith Woolen Co., or the said Second Parties of their respective agreements, then, and in that case, immediately to transfer the aforesaid one hundred (100) shares of stock to the First Party, or to any person, or persons, designated or appointed by it.

4. On the transfer of said shares of stock, as provided in subdivision "(e)" of article "3" hereof, the transferee shall, in his, or its, discretion, either:

(a) Sell said shares of stock, at public, or private, sale, and, out of the proceeds thereof, pay and discharge any and all indebted-

edness, or obligations, owing to the First Party by the said Smith Woolen Co., and the Second Parties, or both, or either, or any of them, and, after such payment, pay over the surplus, if any, to the Second Parties; or

(b) As the holder of two-thirds, or more, of the shares of stock of the said Smith Woolen Co., to take such steps as may be necessary to wind up and dissolve the Smith Woolen Co., and distribute its assets among its stockholders, and, out of said assets so distributed and received by the holder of said one hundred (100) shares, pay and discharge any and all obligations owing to said Doe Company by the said Smith Woolen Co., and the said Second Parties, or both, or either, or any, of them, and, after such payments to the First Party, pay over the surplus, if any, to the Second Parties.

5. Upon the termination of the within agreement one year from the date hereof, or upon the serving of a notice in writing upon the other parties hereto by one of the parties hereto, signifying his, or its, intention to terminate this agreement, at a date not less than thirty (30) days from the service of said notice, if, at such time, all obligations of said Smith Woolen Co., and said Second Parties to the First Party shall have been fully satisfied and discharged, the Third Party shall sell, transfer, set over and assign all of said shares then held by the Third Party unto the Second Parties, their heirs, executors and assigns, or, if at such period the obligations of the said Second Parties, and said Smith Woolen Co., owing to the Doe Company shall not then have been fully paid, satisfied and discharged, then to transfer said shares unto the said First Party, or to such person, or persons, as it may designate or appoint, and such transferee shall receive and hold said shares, as if the said shares had been received by such transferee by reason of a breach of subdivision "(e)" of article "3" hereof, and shall have and be entitled to exercise, in respect thereof, the same powers, rights and privileges, and shall be subject to the same duties and obligations, as are set forth in article "3" hereof.

6. (a) The Third Party hereby signifies his acceptance of the terms of the foregoing trust by signing, sealing and acknowledging this agreement.

(b) Upon the resignation, or death, of the said Third Party, or upon his ceasing to be in the employ of the First Party, the said First Party shall have full power and authority to appoint and

designate any other person, or persons, to act as trustee, in the place and stead of the said Third Party, and, upon such appointment, or designation, by the said First Party, in writing, said Third Party hereby agrees to transfer, convey, set over and assign unto such person, or persons, the said one hundred (100) shares of stock of the said Smith Woolen Co., and, upon such designation and such transfer, as aforesaid, the said person, or persons, so designated shall *ipso facto* be substituted in the place of said Third Party, and shall succeed to all the rights, titles, privileges, powers, duties and obligations of the said Third Party under this agreement, in the same manner and with the same effect as if he, or they, were herein personally named.

(c) Upon such transfer by the said Third Party, the Third Party shall thereupon be fully released and discharged from all duties and liabilities hereunder.

7. The Second Parties hereby agree to execute, from time to time, any and all further, or other instruments, which may be necessary to give and possess the First Party, or the Third Party, or the successor, or successors of the Third Party, of all rights and authorities for and in relation to said shares of stock, in order to carry out this agreement.

IN WITNESS WHEREOF, the said Second and Third Parties have hereunto set their hands and seals, and the First Party has caused this contract to be executed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, the day and year first above written.

Doe Company,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

John Doe (L.S.).
Richard Roe (L.S.).
Henry Koe (L.S.).

[Annex Copy of Contract Guarantied.]

SECTION 2.—CONDITIONAL GUARANTIES.

No. 179.

Conditional guaranty of lease, which will include term of renewal, under option exercised by tenant.⁹

KNOW ALL MEN, that, in consideration of the letting of the within named premises by John Doe (herein called the "Landlord") to Richard Roe (herein called the "Tenant") and of the sum of one dollar (\$1) to us in hand paid by the said Landlord, we, the Roe Brewing Co., a corporation, do hereby covenant and agree to and with said Landlord, his legal representatives and assigns, that, if default shall, at any time, be made by the Tenant, in the payment of rent and the performance of the covenants contained in the within lease on his part to be paid and performed, we will well and truly pay the said rent, or any arrears thereof, that may remain due unto the said Landlord, his legal representatives, and, also, all damages that may arise, in consequence of the non-performance of said covenants, or any of them, providing, however, that notice of such default shall have been given to us by the Landlord, his legal representatives or assigns, within ninety days of the occurrence of same.

IN WITNESS WHEREOF, the Roe Brewing Co. has caused this instrument to be executed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, this 5th day of January, 1923.

Roe Brewing Co.,
By Richard Roe,
President.

(Seal)

Attest:

John Jones,
Secretary.

[Annex Lease Guarantied.]

⁹ Adapted from *Munch v. Ebling Brewing Co.* (1917), 222 N. Y. 591, 118 N. E. 1069.

No. 180.

Conditional guaranty of payment of negotiable instruments, subject to demand.¹⁰

KNOW ALL MEN, that—

WHEREAS, the John Doe Co., a corporation, organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City, desires to obtain loans, discounts, credits and other pecuniary accommodations from the Roe National Bank of New York City; and

WHEREAS, the said Bank requires security for such loans and discounts and for all other indebtedness or liability of the said John Doe Co. to it; and

WHEREAS, we, the undersigned, are interested in said John Doe Co., as stockholders, or otherwise, and are willing to become surety therefor as herein provided:

NOW, THEREFORE, for the purpose aforesaid, and in consideration of the sum of one (\$1) dollar to each of us duly paid at or before the ensembling and delivery hereof, and for other good and valid considerations, the receipt whereof is hereby acknowledged, we, the undersigned, do hereby jointly and severally, for ourselves, and our, and each of our, heirs, executors and administrators, guaranty and warrant until the said Roe National Bank of New York City, its successors and assigns, the prompt payment, at maturity, of each and all the notes, checks, drafts, bills of exchange, and other obligations in writing of each and every name and kind, made, signed, drawn, accepted or endorsed by the said John Doe Co., which the said Roe National Bank of New York City now has, or which it may hereafter have, hold, purchase or obtain, within one year from date hereof; provided, however, that our liabilities hereunder shall not, at any time, exceed the sum of fifteen thousand (\$15,000) dollars and interest thereon.

And, in case default is made in the payment of any of the above mentioned obligations, or in the payment of any lawful claim, or demand, held by said Roe National Bank of New York City against said John Doe Co., we hereby, jointly and severally, covenant, promise and agree to pay the same to the Roe National Bank of New York City, its successors and assigns, upon demand.

¹⁰ Adapted from *First National Bank of Waterloo v. Story* (1911), 200 N. Y. 346, 93 N. E. 940.

This agreement is intended to be full, complete and perfect security and indemnity to the said Bank to the extent and for the time above stated, for any indebtedness or liability of any kind owing by the said company to it from time to time, and to be valid and continuous without other or further notice to us or to any of us.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this 5th day of January, 1923.

Henry Koe (L.S.).

John Smith (L.S.).

In the presence of

John Jones.

No. 181.

Conditional guaranty, whereunder seller of stock guaranties specific return to buyer.¹¹

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, Doe & Co., Inc., is a corporation, duly organized under the laws of the State of Louisiana, and has an authorized capital stock consisting of one thousand (1,000) shares of Class A stock, each of the par value of one hundred (\$100) dollars, and one thousand (1,000) shares of Class B stock, each of the par value of one hundred (\$100) dollars, all fully paid and non-assessable; and

WHEREAS, the First Party is the owner of all of the said capital stock of the said Doe & Co., Inc.; and

WHEREAS, the First Party has agreed to sell to the Second Party, and the Second Party has agreed to buy from the First Party, the said one thousand (1,000) shares of capital stock of Doe & Co., Inc., known as Class B stock; and

WHEREAS, in order to induce the Second Party to purchase said shares of Class B stock, the First Party has agreed to execute this agreement:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. The First Party hereby guaranties that Doe & Co., Inc., will,

¹¹ Adapted from *Corn Products Refining Co. v. U. S.* (1919), 249 U. S. 621, 39 Sup. Ct. Rep. 291, 63 Law ed. 805.

for a period of five (5) years from January 1, 1923, declare and pay, in each year, upon all of said Class B stock, dividends equal to twenty-five (25%) per cent, and that the same shall be paid in semi-annual installments beginning with July 1, 1923.

2. That, if the earnings of Doe & Co., Inc., shall be inadequate for the payment in full of said twenty-five (25%) per cent dividends in any one year, or if said Doe & Co., Inc., shall neglect, fail, or omit, to pay dividends aggregating, in any one year, said twenty-five (25%) per cent upon said Class B stock, the First Party covenants and agrees, in any such event, to pay to the Second Party, upon his demand, so long as the Second Party shall be the owner of the said Class B stock, during said period of five (5) years, in cash, semi-annually, an amount sufficient to make the net returns on said stock equal to twenty-five (25%) per cent per annum in the aggregate.

3. That this agreement shall bind the parties hereto, and each of their heirs, executors, administrators, and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

SECTION 3.—CONTINUING GUARANTIES.

No. 182.

Continuing guaranty of performance by buyers of contract of sale.¹²

KNOW ALL MEN, that, in consideration of the sale of raw silk, from time to time, upon credit, by the Doe Company, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Creditor") to Roe Company, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the

¹² Adapted from *General Silk Importing Co. v. Smith* (1922), 200 App. Div. 750, 194 N. Y. Supp. 11.

"Debtor"), we, Henry Koe and Richard Koe, residing at No. 571½ Broadway, Borough of Manhattan, New York City, HEREBY JOINTLY AND SEVERALLY GUARANTEE TO THE DOE COMPANY:

1. That the said Debtor will duly perform all contracts entered into between said Debtor and the Creditor for the purchase and sale of raw silk, and will pay the purchase price of all goods delivered under such contracts, or otherwise, as and when the same becomes due.

2. That, upon default of the Debtor (and, for the purpose of this agreement, the insolvency of the Debtor shall be deemed to be a default), they will promptly pay to the Creditor the amount for which the Debtor is, or may be, indebted and liable, upon all obligations existing at the time of the default, up to but not exceeding fifty thousand (\$50,000) dollars.

3. That the Creditor may, from time to time, extend the time for the performance of, or otherwise modify, any and all contracts made with said Debtor, and may extend the time of payment of the whole, or any part, of the indebtedness of said Debtor, and may receive and accept notes, bills, checks, and other instruments for the payment of money, made by the said Debtor, or any other person or persons, and extensions and renewals thereof, without in any wise changing, releasing or discharging us, or either of us, from our obligations hereunder.

4. That this agreement shall remain in full force, until the delivery to the said Creditor, at its place of business in New York City, of a notice in writing, signed by us, terminating the same; but this agreement shall apply to all sales made and contracts entered into, prior to the date on which said notice shall have been served as aforesaid.

5. That this agreement shall bind our heirs and personal representatives.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this 5th day of January, 1923.

Henry Koe (L.S.).

Richard Koe (L.S.).

In the presence of
John Jones.

No. 183.

Continuing guaranty of performance of contract of employment.¹³

KNOW ALL MEN, that, in consideration of the sum of one (\$1) dollar to us in hand paid, the receipt whereof is hereby acknowledged, and the execution by the Roe Corporation, a corporation duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City, of a contract of employment with John Doe, we, Henry Koe and Richard Koe, residing at No. 57½ Broadway, Borough of Manhattan, New York City, do hereby guaranty the faithful performance by John Doe of said contract of employment and the prompt payment by said John Doe of any balance, which may be due to Roe Corporation, as shown by its books of account, at the termination of said contract from any cause, or at the expiration of the term of said contract; and we, also, hereby agree to indemnify the Roe Corporation against any and all costs, attorneys' fees, and other expenses, which may be incurred by it in collecting, or attempting to collect any such balance from the said John Doe; and we hereby waive all rights in respect of notice of any breach of said contract by the said John Doe, or of the non-payment of any such balance by the said John Doe; and we agree that any extension of time, change of territory, renewal, or modification, of said contract by the said Roe Corporation and the said John Doe shall not release, or discharge, us from any liabilities or obligations hereunder.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this 5th day of January, 1923.

Henry Koe (L.S.).

Richard Koe (L.S.).

In the presence of
John Jones.

¹³ Adapted from *M. M. Fenner Co. v. McKay* (1918). 222 N. Y. 633, 118 N. E. 1069.

CHAPTER IX

HUSBAND AND WIFE

Section 1.—Agreements before Marriage.

- No. 184—Ante-nuptial agreement, whereunder intended wife will receive fixed sum, in lieu of dower, if she survives her intended husband.
- No. 185—Ante-nuptial agreement, whereunder intended wife will hold her own property free of curtesy and other claims and will receive fixed sum in cash or securities, in lieu of dower, if she survives her intended husband.

Section 2.—Agreements after Marriage.

- No. 186—Agreement of separation made with trustee, whereunder provisions are made for support of wife and child, and custody of child is given to wife, and husband is permitted to visit and receive visits of child at stated intervals.
- No. 187—Agreement of separation, whereunder provision is made for support of wife, and property is conveyed to trustee, in trust, to secure the performance of the agreement.
- No. 188—Agreement of separation made without intervention of trustee, whereunder provision is made for the support of wife, and husband agrees to bequeath wife a stated sum, if she survives him.
- No. 189—Agreement of separation, made after commencement of action for separation, whereunder provision is made for support of wife, and action is discontinued.
- No. 190—Agreement between husband and wife, relating to custody of children, made after decree of separation.
- No. 191—Agreement between husband and wife, whereunder husband agrees to appear in divorce action pending in foreign state, and provision is made for the custody of children, and each party agrees to execute a bond to insure performance of the agreement.

SECTION 1.—AGREEMENTS BEFORE MARRIAGE.

No. 184.

Ante-nuptial agreement, whereunder intended wife will receive fixed sum, in lieu of dower, if she survives her intended husband.¹

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Jane Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, a marriage is contemplated between the parties hereto, and the First Party has fully informed the Second Party of his financial situation, including the amount of his assets, liabilities and net income; and

WHEREAS, the parties hereto desire to make a fair and reasonable provision for the Second Party, in lieu of the rights, which, after the consummation of said marriage, the Second Party might, or could, have, as wife, or widow, or otherwise, in the real property which the first Party now has, or may hereafter own:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the Second Party shall receive and accept from the estate of the First Party, after his death, if she shall survive such First Party as his widow, the sum of five thousand (\$5,000) dollars, in place and stead of all rights, which, as widow, the Second Party might otherwise have, either as dower in the real estate of the First Party, or as a distributive share of the personal property of the First Party, under any statutes now, or hereafter, in force and effect.

2. That the First Party, his heirs or assigns, shall hold free from any claim, or right, of dower, inchoate, or otherwise, on the part of the Second Party, all real property, which he may now, or hereafter, own; and that the Second Party will hereafter execute, or join as a party in, any instrument, which may be requested by the First Party, his heirs or assigns, for the purpose of divesting any claim of dower, inchoate, or otherwise, in said property.

¹ Adapted from *Logan v. Whitley* (1910), 129 App. Div. 666, 114 N. Y. Supp. 255.

3. That the First Party hereby agrees that the said sum of five thousand (\$5,000) dollars shall be fully paid to the Second Party, if she shall survive him as his widow, as soon after his decease as may be practicable; and said sum, until paid, shall constitute a charge upon the entire estate, real or personal, of which the First Party may die seized or possessed.

4. That this agreement shall become effective, only in the event that the contemplated marriage between the parties hereto shall be solemnized.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Jane Roe (L.S.).

In the presence of
John Jones.

No. 185.

Ante-nuptial agreement, whereunder intended wife will hold her own property free of curtesy and other claims and will receive fixed sum in cash or securities, in lieu of dower, if she survives her intended husband.²

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Jane Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, a marriage is about to be solemnized between the parties hereto; and

WHEREAS, in anticipation of such marriage, the said parties desire, by an ante-nuptial agreement, to fix and determine the rights of each of them in any and all property of every nature and description and wheresoever located that the other of them may own, at the time of such marriage, or may acquire thereafter, and, particularly, to have the First Party agree to make and make, and the Second Party agree to accept and assent to, a pecuniary provision for the Second Party's benefit, in lieu and in bar of any and all right, or claim, of dower in and to any and all of the First Party's lands, tenements and hereditaments, and, also, in lieu and full discharge and satisfaction of any and all other right, title and

² Adapted from *In re Vanderbilt's Estate* (1919), 226 N. Y. 638, 123 N. E. 893.

interest in and to any and all of his personal estate that she, as his widow, might have but for such provision and the execution and delivery of this agreement and the full performance thereof by the First Party, his heirs, executors, administrators or assigns:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the Second Party shall have, keep and retain the sole ownership, control and enjoyment of, and, during her life, or, by last will and testament, or by other testamentary disposition, shall have the exclusive right to dispose of, any and all property, real, personal or mixed, which she now owns, or is possessed of, or hereafter may acquire or receive, as her own absolute property, without interference by, or from, the First Party, and in like manner as if the said marriage had not taken place and the Second Party had remained unmarried; and that if, and in the event, the First Party shall survive the Second Party, the First Party will not make, nor will his heirs, executors, administrators or assigns make, any claim of curtesy, or any claim to a distributive share, or any claim of any other nature whatsoever, in, or to, any part of the Second Party's separate estate, real, personal or mixed, to which the First Party, as the Second Party's surviving husband, might be, or become, entitled, but for the execution and delivery of this agreement, and so that all of the property of the Second Party not effectually disposed of by her, during her life, or by testamentary disposition, shall devolve in the same manner as if the First Party had predeceased her.

2. (a) That the First Party, by last will and testament, or other instrument to take effect and become operative upon his death, will give and bequeath, or will assign, transfer and set over, or cause to be assigned, transferred and set over, to the Second Party, provided she shall have survived him, the sum of one hundred thousand (\$100,000) dollars, or securities of the then market value of one hundred thousand (\$100,000) dollars, clear of all death duties and all other charges and deductions whatsoever, to be paid over to the Second Party as soon after the death of the First Party as may be practicable and convenient in the administration of his estate, and, in any case, not later than the expiration of eighteen (18) calendar months after the death of the First Party, with interest from his death to the date of payment, at the rate of five (5%) per cent per annum, or, in his discretion, at any time during his life, will pay, assign, transfer and set over, or cause to be paid, assigned,

transferred and set over to the Second Party, the sum of one hundred thousand (\$100,000) dollars, or securities of the then market value of one hundred thousand (\$100,000) dollars, clear of all duties, charges and deductions aforesaid.

(b) That, as a separate covenant, the First Party agrees with the Second Party, provided she shall survive him, that his executors or administrators shall, within eighteen (18) calendar months after his death, pay to the First Party the sum of one hundred thousand (\$100,000) dollars, clear of all duties, charges and deductions as aforesaid, with interest at the rate aforesaid from the date of his death; it being expressly understood, however, (1) that all sums of money, interest and securities that shall be paid, assigned, transferred or set over to the Second Party, either in the lifetime of the First Party, or under any testamentary, or other, disposition of his, in pursuance of the preceding clause "(a)" of this article, shall be accepted by the Second Party in, or towards, the satisfaction of the said sum and interest otherwise to be paid under this clause "(b)" of this article, any such securities being taken at their market value aforesaid; and (2), likewise, that all sums of money that shall be paid over to the Second Party by the executors or administrators of the First Party, in pursuance of the provisions of this clause "(b)" of this article, shall be accepted by the Second Party in, or towards, the satisfaction of the said sum, or securities and interest otherwise to be given, bequeathed, assigned, transferred or set over in pursuance of the provisions of clause "(a)" of this article, the purpose of the parties being to provide hereby for the payment, assignment or transfer by said First Party, his heirs, executors, administrators or assigns, to the Second Party, of the sum of one hundred thousand (\$100,000) dollars, or securities of the market value of one hundred thousand (\$100,000) dollars and interest, as aforesaid, and no more.

(c) That the said sum of one hundred thousand (\$100,000) dollars, or, in the alternative, said securities of the market value of one hundred thousand (\$100,000) dollars and interest, as aforesaid, shall be so given, bequeathed, assigned, transferred, set over or paid to the First Party, as a pecuniary provision for her, in lieu and in bar of any and all right, or claim, of dower, in and to any and all of the lands, tenements, and hereditaments of the First Party, wheresoever the same may be located, or to which the Second Party might be, or become, entitled, but for the execution of this

agreement, and the performance of the covenants herein by the First Party, his executors, administrators or assigns, and, also, in lieu and wholly in discharge, satisfaction and payment of any and all other right, claim, title or interest of any nature or character in and to any and all of the First Party's lands, tenements, hereditaments, wheresoever the same may be located, and, also, of any and all right, claim, title or interest of any nature or character in and to any and all of his personal estate, wheresoever the same may be situated, to which the Second Party, as his widow, might be, or become, entitled, but for the execution and delivery of this agreement, and the performance of the covenants herein by the First Party, his heirs, executors, administrators or assigns.

3. That the Second Party, having been fully advised in the premises, hereby assents to the provisions hereinbefore made for her benefit, in lieu and in bar of any and all right, or claim, of dower in and to any and all of the lands, tenements or hereditaments, wheresoever the same may be located, of the First Party, to which the Second Party, as his widow, might be, or become, entitled but for the execution of this instrument; and, also, in lieu and wholly in discharge, satisfaction and payment of any and all other right, claim, title or interest of any nature or character in and to any and all of his lands, tenements, hereditaments wheresoever the same may be located, and, also, of any, or all, right, claim, title or interest of any nature or character in and to any and all of his personal estate, wheresoever the same may be situated, to which the Second Party, as the widow of the First Party, might be, or become, entitled, but for the execution and delivery of this agreement, and the performance of the covenants therein by the First Party, his heirs, executors, administrators or assigns; and, in consideration of the covenants of the said First Party herein contained, the Second Party does, for herself, her heirs, executors, administrators and assigns, covenant and agree that, immediately upon the receipt of the said sum of one hundred thousand (\$100,000) dollars and interest as aforesaid, she will execute and deliver any and every instrument, or document, that, in the judgment of counsel for the First Party, or for his heirs, executors, administrators or assigns, may be necessary, or any and every such instrument, or document, that any such counsel may, or shall, request her to execute and deliver, to accomplish and effect a release and waiver of all her rights, or claims, or interest as aforesaid, and

to make records of, or otherwise evidence, the fulfillment of any such right, or claim, or interest, upon her part.

4. Nothing herein contained shall, in any manner, bar, or affect the right of, the Second Party to claim and receive any property of any nature, or character, that the First Party, by last will and testament, or other testamentary disposition, or by instrument executed, or any act done, during his life, may give, devise or bequeath, or transfer, assign or set over, or become obligated to transfer, assign and set over, to the Second Party, in addition to the provision herein made for the purpose hereinabove expressed; and nothing herein contained shall, in any manner, bar, or affect, the right of the First Party to claim and receive any property, of any nature and character, that the Second Party, by last will and testament, or other testamentary disposition, or by instrument executed, or any act done, during her life, may give, devise or bequeath, or transfer, assign or set over, or become obligated to transfer, assign and set over to the First Party, in addition to the provision herein made for the purpose hereinbefore expressed.

5. This agreement shall be, and become, effective, only in the event that the contemplated marriage between the parties hereto shall be solemnized, and, if such contemplated marriage shall not be solemnized, then, and in such event, this agreement shall be, and become, wholly null and void.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

In the presence of
John Jones.

Jane Doe (L.S.).

SECTION 2.—AGREEMENTS AFTER MARRIAGE.

No. 186.

Agreement of separation made with trustee, whereunder provisions are made for support of wife and child, and custody of child is given to wife, and husband is permitted to visit and receive visits of child at stated intervals.³

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York

³ Adapted from *Ducas v. Ducas* (1912), 150 App. Div. 397, 135 N. Y. Supp. 35.

City (herein called the "First Party"), and Jane Doe, residing at No. 371½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), and Richard Roe, as Trustee, residing at No. 571½ Broadway, Borough of Manhattan, New York City (herein called the "Third Party"), WITNESSETH:

WHEREAS, the First and Second Parties were duly married on or about January 5, 1916, in the City of New York, and the issue of such marriage is a son, Charles Doe, now five years of age; and

WHEREAS, unfortunate differences have arisen between the First and Second Parties, as a result of which the First and Second Parties have separated, and are now living separate and apart; and

WHEREAS, the First and Second Parties are desirous of entering into an agreement, under which they may continue to live separate and apart, and under which fair and reasonable provision shall be made for the Second Party and for the aforesaid child, and an arrangement shall be made for the custody of the said child; and

WHEREAS, the Third Party has consented to act as Trustee, and, in that capacity, to join in this agreement:

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO, AS FOLLOWS:

1. That from the date hereof, the First and Second Parties may, and shall, continue to live separate and apart from each other, and neither of said parties shall, at any time, sue, nor suffer the other to be sued, in any action for separation, for living separate and apart, nor shall either party compel the other to live with him, or her, nor shall either party molest, or trouble the other.

2. That the custody of said child, Charles Doe, during his minority, is hereby given to the Second Party, except as herein otherwise provided, and the Second Party shall maintain, educate and support the said child, Charles Doe, out of the allowance hereinafter provided therefor, and shall, at all times, during the term of this agreement, reside with the said child in the Borough of Manhattan, City of New York, provided, however, as follows:

That during the months of June, July, August and September, in the year 1923, and during such months in alternate years thereafter, the Second Party may travel abroad with the said child; and that, during the said months in the year 1924, and during such months in alternate years thereafter, and in any other year, or years, that the Second Party shall not travel abroad with the said child, the Second Party shall spend such months with the said

Charles Doe at any place selected by her, within a radius of one hundred (100) miles of New York City.

3. (a) That the First Party shall have the right to visit the said child at the place of residence of the Second Party, in the Borough of Manhattan, New York City, daily, between the hours of three and five o'clock, P.M., and, during such hours, the Second Party shall have the said child ready to receive the visit of the First Party; and the First Party shall further have the right of having the said child in his custody from two o'clock on Saturday afternoon until nine o'clock on Monday morning in each week, during which the Second Party shall, in accordance with the terms hereof, be in the Borough of Manhattan, New York City; and, whenever the First Party shall desire to exercise such right of custody, the First Party shall, at his own cost and expense, send for the said child, and return him to the residence of the Second Party.

(b) That, during the months of June, July, August and September in any year, or years, that the Second Party shall not travel abroad with the said child, the First Party shall have the privilege of visiting the said child, at such reasonable time, or times, as he may select.

4. That the First Party shall pay to the Trustee the sum of five thousand (\$5,000) dollars per annum, for the maintenance and support of the Second Party, during her lifetime, and the further sum of twenty-five hundred (\$2,500) dollars per annum, for the maintenance, support and education of the said child, Charles Doe, during his minority; and that all of such payments shall be made in equal monthly installments, on the first day of each and every month.

5. That the Second Party shall accept the provisions herein made, in lieu of any and all other claims, or provisions, for her maintenance and support, or for the support, maintenance and education of the said child, Charles Doe, during the term of this agreement; and the Second and Third Parties hereby covenant and agree with the First Party, to indemnify and save the First Party harmless from any other claim and liability, which may accrue after the date of this agreement, for the support and maintenance of the Second Party, and for the support, maintenance and education of the said child, Charles Doe, during his minority.

6. That the Second Party shall not contract, at any time, or times, in the name of the First Party, or, in any way, subject him

to liability for, any debt, or debts, for which the First Party, as her husband, might, in any way, become liable.

7. That this agreement shall be terminated by either party obtaining an absolute divorce from the other, or by the death of either party.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Jane Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

No. 187.

Agreement of separation, whereunder provision is made for support of wife, and property is conveyed to trustee, in trust, to secure the performance of the agreement.⁴

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), Jane Doe, residing at No. 371½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), and Roe Trust Company, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 32½ William Street, Borough of Manhattan, New York City (herein called the "Third Party"), WITNESSETH:

WHEREAS, the First and Second Parties are husband and wife; and

WHEREAS, an action for divorce is now pending in the Court of Common Pleas of the State of Ohio, County of Lima, in which the Second Party is the plaintiff, and the First Party is the defendant; and

WHEREAS, the said First and Second Parties, through their respective counsel, have agreed upon a settlement of all questions of alimony, alimony pendente lite, maintenance and support, and of provisions to be received in lieu of dower, and of all rights of every kind and character, which have accrued, or may accrue, to the Second Party by reason of their marital relations; and

⁴ Adapted from *Brown v. Cleveland Trust Co.* (1922), 233 N. Y. 614, 135 N. E. 829.

WHEREAS, the First Party has heretofore transferred and delivered certain furniture and personal property to the Second Party, and has agreed in writing to cause to be paid to the Second Party the sum of five thousand (\$5,000) dollars out of the estate of Richard Doe, deceased, upon certain terms and conditions agreed upon by the First and Second Parties:

NOW, THEREFORE, THE PARTIES HERETO HEREBY AGREE, AS FOLLOWS:

1. That the First Party shall pay to the Second Party the sum of two thousand and four hundred (\$2,400) dollars per year, in equal monthly installments of two hundred (\$200) dollars each upon the first day of each and every month from and after the date hereof, during the life of the Second Party, provided she remains unmarried; and, in the event of the said Second Party remarrying, then the amount so to be paid to her by the First Party shall be decreased one-half, and the First Party thereafter shall pay to the Second Party the sum of twelve hundred (\$1,200) dollars per annum, payable in equal monthly installments of one hundred (\$100) dollars each, upon the first day of each and every month, during the remainder of her natural life.

2. That the Second Party hereby agrees to, and does, accept the provisions hereinbefore set forth, in lieu of dower, or contingent right of dower, in the real estate of said First Party, and in lieu of all claims against the said First Party for alimony, alimony pendente lite, maintenance and support, and all other claims and demands of every kind and nature, except the obligations imposed by the terms and conditions of this agreement.

3. That to secure the prompt and punctual performance of the obligations of the First Party under the terms of this agreement, the First Party has this day conveyed to the Third Party his residence, known as subplot No. 30A of the Euclid Heights Allotment, in Cayuga County, Ohio; the said premises, together with all the appurtenances thereto belonging, and therewith connected, to be held by the said Third Party, in trust, nevertheless, for the purposes hereinafter set forth, and upon the following terms and conditions:

(a) That the said Third Party, as trustee, shall continue to hold the title to the aforesaid premises, during the life of the Second Party, or until such time as the First Party shall have delivered to the Third Party, as trustee, such bonds, stocks, or real estate or

property, in such amount as, in the opinion of the officers of said Third Party; to entirely and safely secure the punctual payment of said sum of twenty-four hundred (\$2,400) dollars per annum, as hereinbefore provided, or of such lesser sum of twelve hundred (\$1,200) dollars per annum herein provided for in the event of the Second Party remarrying.

(b) That the said Third Party, as trustee, shall, at all times, cause said premises to be insured in such an amount, and in such company, as, in the judgment of its officers, shall safely and amply protect the interest of said Second Party; and all costs and expenses, in connection with securing and maintaining said insurance, shall be paid by the First Party.

(c) That the said Third Party, as trustee, shall, at all times, keep the buildings and appurtenances on said premises in constant, good repair; and said First Party shall pay all taxes, general and special, of every kind and character, which shall become a lien on said premises, and deposit with the Third Party, at the various times, before said taxes become delinquent, the receipts showing payment of the same, and, if said receipts are not so deposited, the said Third Party shall pay said taxes and shall have a lien for the amount thereof upon said premises as hereinafter provided.

(d) That in the event the First Party fails to pay to the Second Party any of said monthly payments hereinbefore provided for, the said Third Party shall have the right to, and shall, on demand of said Second Party, advance to the said Second Party the said monthly payments hereinbefore provided for, at the rate of two hundred (\$200) dollars per month, or, if the Second Party shall then be remarried, at the lesser rate of one hundred (\$100) dollars per month, and, in addition thereto, shall pay any and all taxes, which shall become due and payable, and which shall not have been paid by the First Party, together with the cost of any and all insurance, which shall not have been paid for by the said First Party, and the expense of any and all repairs, which said Third Party may deem necessary to be made upon the building situated on the aforesaid premises and the appurtenances connected therewith; provided the First Party either refuses, or neglects, to make said repairs.

And, for all such advances, as may be made by said Third Party, and for interest thereon at the rate of six (6%) per cent per annum, it is agreed by the First and Second Parties that the said

Third Party shall have the first lien upon the aforesaid premises and hold the title thereof to secure to itself the repayment of the same.

And, in the event that the said Third Party so makes advances, for the purposes aforesaid, the First Party hereby agrees that, after thirty (30) days' written notice to him from said Third Party to reimburse it for any and all such advances, or expenses, and the aforementioned interest thereon, the said Third Party shall have the right to, and shall, whenever in the discretion of its officers it deems it necessary, in order to protect the Second Party, by providing a fund, the income from which will be sufficient to provide for the payment of the monthly sums then due and payable to said Second Party, and to become due and payable, during the remainder of her natural life, subject the said property to sale, and sell the same, either at private, or public sale, according to the best judgment of the officers of the Third Party, for the purpose of reimbursing itself for all such advances and expenses so made and incurred and for the said interest thereon; and the remaining proceeds of any such sale, or so much thereof as, in the opinion of the officers of the Third Party, may be necessary, shall be held by said Third Party to secure the prompt and punctual payment of the monthly installments thereafter becoming due and payable to the Second Party, together with the taxes, insurance, repairs and expenses of every other character in connection with the administration of this trust, which the First Party shall have failed to pay, or neglected to make proper provision for in the future.

And, in the event of any such sale, the said Third Party is hereby authorized and empowered, according to the best judgment of its officers, to invest the proceeds derived therefrom, and thereafter to pay the income derived from the investment of said proceeds, and the principal thereof if necessary, in making said monthly payments as they become due and payable to said Second Party.

(e) In the event that the First Party faithfully and punctually performs all the obligations of this agreement on his part to be performed, the said Third Party is hereby authorized, upon the consent in writing of the First Party, to sell, at any time, said real estate, or the bonds, stocks, or other property substituted therefor, and to re-invest the proceeds of any, or all, such sales in other property, or securities, as shall, in the judgment of the officers of

the Third Party, not imperil the security for the payment of said monthly payments to said Second Party, as herein provided.

(f) In the event that the said Second Party marries, then the said Third Party shall continue to hold said subplot No. 30A to secure the terms of this agreement, providing that, at the time of said remarriage, it holds the title to said premises; but, in such event, the said First Party shall have the right to substitute for the said residence property, or any other real estate to which the said Third Party shall have title for the purposes of this agreement, stocks, bonds, or such other property, in such amounts, or of such value, as the officers of the said Third Party may then deem to be sufficient to secure the prompt and punctual payment of the monthly installments thereafter to become due and payable to the said Second Party.

(g) That if, at the date of said remarriage, the said monthly installments shall have been safely and amply secured by stocks, bonds or other personal property then in the possession of said Third Party, the said Third Party shall pay over and transfer to said First Party one-half of the principal of said trust fund as of the date of said remarriage, or such amount of the principal of said trust fund as, in the judgment of the officers of the Third Party, shall not be required thereafter properly to secure the prompt and punctual payment to said Second Party of the sum of twelve hundred (\$1,200) dollars per annum, in monthly installments of one hundred (\$100) dollars upon the first day of each and every month.

(h) That, upon the death of said Second Party, all property, of every kind and character, real, personal or mixed, then in the possession of the Third Party, shall, by said Third Party, be conveyed and transferred to the said First Party, his heirs, executors, administrators and assigns, and the aforesaid trust shall thereupon terminate.

(i) That the said First Party agrees that he will pay all the charges for the services rendered by the Third Party under the terms of this agreement.

(j) That the Third Party is hereby authorized and empowered to execute deeds in fee simple, and legal transfers, for the conveyance of any, and all, property of which it may become possessed, under the terms of this agreement, and to do any, and all, other things incident and necessary to the proper management and

control of any, and all, such property and the execution of the trust herein provided.

4. That said First Party hereby agrees that the covenants and agreements herein provided to be performed by him shall be covenants and agreements for himself, his heirs, administrators and assigns, and obligations upon him, and them, and each of them, and upon his said estate.

5. That the Third Party hereby accepts and agrees to perform the trust hereinbefore provided.

IN WITNESS WHEREOF, the First and Second Parties have hereunto set their hands and seals, and the Third Party has caused this instrument to be signed by its President, thereunto duly authorized, and its corporate seal to be hereunto affixed, attested by its Secretary, the day and year first above written.

John Doe (L.S.).

Jane Doe (L.S.).

Roe Trust Co.,

By Richard Roe,

President.

(Seal)

Attest:

John Jones,
Secretary.

No. 188.

Agreement of separation made without intervention of trustee, whereunder provision is made for the support of wife, and husband agrees to bequeath wife a stated sum, if she survives him.⁵

THIS AGREEMENT, made January 5, 1923, by John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Jane Doe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party and the Second Party were lawfully married on or about November 10, 1903, and are now husband and wife; and

⁵ Adapted from *Winburn v. Winburn* (1922), 200 App. Div. 26, 192 N. Y. Supp. 280.

WHEREAS, divers disputes and unhappy differences have arisen between the said parties, as a result of which they are now living separate and apart; and

WHEREAS, the said parties desire to enter into articles of separation for the purpose of confirming their separation and of making arrangements in connection therewith:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That it shall be lawful for each of said parties, at all times, to live, and continue to live, separate and apart from the other, and to reside, from time to time, at such place, or places, and with such person, or persons, as either such party may see fit, and to conduct, carry on and engage in any employment, business or trade, which either may deem fit, free from any control, restraint, or interference, directly or indirectly, by the other, in all respects as if such parties were sole and unmarried.

2. That neither party shall molest the other, nor compel, nor attempt to compel, the other to cohabit with him, or her, by any legal, or other, action or proceedings, for the restitution of conjugal rights, or otherwise.

3. That each party hereby waives and releases to the other any and all claims, which he or she may, or might, have, or claim to have, against the other, by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the day of the date of this agreement.

4. That the Second Party hereby waives, releases and bars herself of all right of dower in and to any and all real property, which the First Party now owns, or which the First Party may hereafter own, or acquire; and the Second Party will, upon request, execute good and sufficient release, or releases, of dower to the said First Party, his heirs and assigns, or to any other person whom the First Party, his heirs or assigns may designate, or will join, upon request, with the First Party, in executing any deed, or deeds, of any real property now owned, or which may hereafter be owned, or acquired, by the First Party.

5. That the First Party, while the said parties hereto shall both remain alive, and so long as the Second Party shall fully keep and perform the covenants and conditions to be kept and performed by her under this agreement, shall pay to the Second Party the sum of nine thousand (\$9,000) dollars per annum, in equal monthly

installments on the first day of each and every month, beginning with February, 1923.

6. (a) That the Second Party shall deliver to the First Party, upon demand, the personal property now in her possession, which is set forth in "Schedule A," hereto annexed, and hereby made a part hereof; and the Second Party hereby surrenders and waives any and all claim, or claims, of any kind, or nature, to said property.

(b) That all other personal property now in the possession of the Second Party shall be retained by the Second Party, free of any claim, or claims, of any kind, or nature, whatsoever, on the part of the First Party.

7. That the First Party covenants and agrees that he will permit any will of the Second Party to be probated, and will allow letters of administration upon her estate and personal effects to be taken and received by any person, who would have been entitled thereto, had the First Party died, during the lifetime of the Second Party.

8. That the Second Party covenants and agrees that, so long as the First Party, and his legal representatives, shall keep and perform the covenants and agreements to be kept and performed by the First Party and his legal representatives hereunder, that she will not, at any time, contract any debt, charge, or liability, whatsoever, for which the First Party, his legal representatives, or his property, or estate, shall, or may become, or be, liable; and the Second Party covenants and agrees, at all times, to keep the said First Party free, harmless and indemnified from any and all debts, charges and liabilities hereafter contracted, or incurred, by the Second Party.

9. That the First Party agrees, by his last will and testament, or otherwise, to give to the Second Party the sum of one hundred thousand (\$100,000) dollars, in the event that she shall survive him, and such amount shall be a first lien upon the estate of which the First Party may die seized or possessed; and the First Party hereby directs his executors, administrators and assigns to pay such sum to the Second Party, if she shall survive him.

10. (a) That, if, at any future time, the First Party shall obtain a valid decree of divorce in the State of New York against the Second Party, then, and in such event, this agreement, and all the terms and conditions hereof, shall immediately cease and

terminate, and none of the parties hereto shall thereafter be liable hereunder.

(b) That, if at any future time, the Second Party shall remarry, then, and in such event, all the provisions for the maintenance of the Second Party herein contained shall immediately cease and terminate.

11. That the Second Party shall, on or before May 30, 1923, vacate and surrender the apartment now occupied by her, at No. 371½ Broadway, Borough of Manhattan, New York City.

12. That the First and Second Parties shall, at any time, or times, make, execute and deliver any and all such further and other instruments as the other of said parties shall reasonably require, for the purpose of giving full force and effect to this agreement and to the covenants, conditions and provisions thereof.

13. That all the covenants, stipulations, promises, agreements and provisions in this instrument contained shall apply to, bind, and be obligatory upon, the heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto, or either of them, whether so expressed or not.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Jane Doe (L.S.).

In the presence of

John Jones.

[Annex Schedule of Property.]

No. 189.

Agreement of separation, made after commencement of action for separation, whereunder provision is made for support of wife, and action is discontinued.⁶

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Jane Doe, residing at No. 371½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the said parties intermarried on or about April 27, 1900; and

⁶ Adapted from *Titus v. Bassi* (1918), 182 App. Div. 387, 169 N. Y. Supp. 49.

WHEREAS, the said parties separated on or about May 5, 1922, and have ever since lived separate and apart from each other, and are now living separate and apart from each other; and

WHEREAS, on or about July 19, 1922, the Second Party instituted an action against the First Party in the Supreme Court of the State of New York, New York County, demanding a judgment of separation from the bed and board of the said First Party and a reasonable provision for support and maintenance out of the property of the said First Party; and

WHEREAS, said action is still pending and undetermined; and

WHEREAS, divers other differences and disputes exist, and have existed between the said parties; and

WHEREAS, said parties have mutually agreed upon what is a reasonable provision for the support and maintenance of the said Second Party, past, present, and for the remainder of her natural life; and

WHEREAS, the said parties have agreed upon a satisfactory and reasonable and just disposal of all of the property of the First Party, free and discharged of any and all past, present and future claims, demands, charges, inchoate right of dower, dower estate, rights, interests, lien, administration as widow, or other property rights of any kinds whatsoever of the said Second Party, to the end that the said First Party, his legal representatives, heirs and assigns, may and shall hold all of such property (except such as is hereinafter conveyed to the said Second Party) to his sole and separate use, and to the sole and separate use of his heirs, legal representatives and assigns, and free from administration by the said Second Party, in case the said First Party shall die intestate, leaving the said Second Party as his widow; and

WHEREAS, the First Party in the action above referred, heretofore paid to the Second Party, for her support and maintenance and as alimony, the sum of five hundred (\$500) dollars, and to her counsel the sum of two hundred and fifty (\$250) dollars as counsel fees therein; and

WHEREAS, the Second Party has contracted certain debts, all of which are set forth in "Schedule A," which is hereto annexed and hereby made a part hereof:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That it shall be lawful for the said parties to continue to live separate and apart from each other, during the term of their

natural lives; and that each of said parties shall, at all times, live separate and apart from the other, as if sole and unmarried, and may reside, from time to time, at such place, or places, and may conduct, carry on and engage in any employment, business or trade, that either shall deem fit, without any control, restraint or interference, directly or indirectly, by the other party hereto.

2. That neither party shall molest the other, nor compel the other to dwell with him, or her, by any legal proceeding, or otherwise.

3. (a) That the First Party shall, in behalf of the Second Party, but at his own cost and expense, pay, satisfy and discharge all and singular the debts set forth in "Schedule A"; and the Second Party hereby covenants that in such schedule are included any and all claims and demands incurred by the Second Party for which the First Party is, or may be, answerable or chargeable.

(b) That the First Party, contemporaneously with the execution of this agreement, shall:

(1) Pay to the Second Party the sum of five thousand (\$5,000) dollars in cash, or by certified check, drawn to the order of the Second Party; and

(2) In addition to the counsel fee and alimony paid as afore-said, pay to the Second Party the sum of five hundred (\$500) dollars, in full satisfaction and discharge of any and all counsel fee, or fees, in said action for separation, and all counsel fees, which said Second Party might, or could, claim, or demand, at any future time, upon any ground whatsoever.

(3) By good and sufficient deed, transfer and convey to the Second Party all those certain twenty (20) acres of land, situate, lying and being, at Doeville, in the County of Nassau, State of New York, which are bounded and described, as follows:

BEGINNING * * *

(c) That the Second Party is familiar with the said property so to be conveyed to her, and hereby admits that the same has a market value of twenty thousand (\$20,000) dollars.

(d) That the Second Party hereby accepts the considerations herein mentioned from the First Party, as, and for, a satisfactory, reasonable and sufficient provision for the whole support and maintenance of the Second Party, past, present and future, during her natural life; and the Second Party covenants and agrees that such provision for her support and maintenance is ample, and will,

in fact, provide the said Second Party with support and maintenance, befitting her station in life, for, and during, the life of the said Second Party; and that said considerations have been, and are hereby fully, accepted in full satisfaction and in lieu of support and maintenance of the Second Party by the First Party, during the life of the Second Party.

4. That the said Second Party, in conjunction with the First Party, has conveyed to Richard Roe, all her estates, right, title and interest, inchoate right of dower, dower, and other property rights of, in, and to all, the real property owned by the First Party, at the date of this instrument, other than the above described twenty acres of land at Doeville, New York.

5. That the First Party agrees that the aforesaid action for separation now pending in the Supreme Court of the State of New York, County of New York, wherein the said Second Party is the plaintiff, and the said First Party is the defendant, shall forthwith be discontinued, without costs to either party as against the other, and that the Second Party will take all proper and necessary proceedings to effect such a discontinuance thereof.

6. That the Second Party shall have the right to dispose of her property, by last will and testament, or otherwise, and that the First Party agrees that the estate of the Second Party, whether real, or personal, shall, subject to her debts and engagements, go and belong to the person, or persons, who would have become entitled thereto, if the First Party had died during the lifetime of the Second Party; and the said First Party further covenants and agrees that he will permit any will of the Second Party to be probated, and will allow administration upon her personal estate and effects to be taken out by the person, or persons, who would have been entitled thereto, had he died, during her lifetime.

7. That the First Party shall have the right to dispose of his property, by last will and testament, or otherwise, and that the Second Party agrees that the estate of the First Party, whether real, or personal, shall, after the payment to, or for the account of, the Second Party, as herein provided, of the considerations herein mentioned, but subject to his debts and engagements, go and belong to the person, or persons, who would have become entitled thereto, if the Second Party had died during the lifetime of the First Party; and the said Second Party further covenants and agrees that she will permit any will of the First Party to be probated, and

will allow administration upon his personal estate and effects to be taken out by the person, or persons, who would have been entitled thereto, had she died, during his lifetime.

8. That the Second Party shall not, at any time, contract, or incur, any liability, in behalf of the First Party, nor obligate, nor charge, his credit in any manner whatsoever; and that the Second Party shall not, at any time, make any claim, or demand upon the First Party, for the support and maintenance of herself, other than the full and complete provision therefor herein agreed upon.

9. That each party shall, and will, at any time, or times, hereafter make, execute and deliver, any and all such further assurances and things, as the other of said parties shall reasonably require, for the purpose of giving full force and effect to this agreement and to the covenants, conditions, provisions and agreements thereof.

10. That if the marriage between the parties hereto shall be dissolved, by the order, judgment or decree of any court of competent jurisdiction, that then, and in such case, the considerations mentioned herein, passing from the First Party to the Second Party, shall be in full satisfaction and discharge of alimony, counsel fees and other claims and demands, which might, or could, be made by the Second Party against the First Party, for any cause whatsoever.

10. That all of the covenants, promises, stipulations, agreements and provisions herein contained shall apply to, bind, and be obligatory upon, the heirs, executors, administrators, personal representatives and assigns of the parties hereto, whether so expressed or not.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Jane Doe (L.S.).

In the presence of
John Jones.

[Annex Schedule of Debts.]

No. 190.

Agreement between husband and wife relating to custody of children, made after decree of separation.⁷

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Jane Doe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party married the Second Party on January 20, 1900; and

WHEREAS, on March 24, 1921, the First Party duly obtained from the Supreme Court of the State of New York, New York County, a decree of separation from the bed and board of the Second Party; and

WHEREAS, in and by said decree of separation, the sole custody of John Doe, Jr., and Mary Doe, the two children of the First and Second Parties, was awarded to the First Party; and

WHEREAS, the First Party is now a resident of Boise City, Ada County, State of Idaho, and the Second Party is now a resident of Binghamton, Broome County, State of New York; and

WHEREAS, the parties hereto desire to provide for the maintenance, education, support and custody of the said two children, all as hereinafter set forth:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the First Party shall, at the expense of the Second Party, send the said children to the Second Party, at his home, in Binghamton, N. Y., on or before February 5, 1923.

2. That from and after February 5, 1923, the custody of the said children, up to February 5, 1928, shall be divided between the parties hereto, as follows:

(a) That the Second Party shall have the entire care and custody of said children between February 5, 1923, and July 5, 1925; and

(b) That the First Party shall have the entire care and custody of said children between July 6, 1925, and February 5, 1928.

3. That, upon the termination of each period of custody, the

⁷ Adapted from *LaMoutte v. Title Guaranty & Surety Co.* (1917), 221 N. Y. 690, 117 N. E. 1073.

party in whose custody the children then shall be, shall deliver the said children to the other party hereto. There shall be no excuse for any failure, refusal or neglect so to deliver the children, or any child, except the sickness of such child or children, which shall be certified to in detail by the attending physician. Each party shall have the right to have such child or the children, examined by a physician designated by him, or her, to ascertain the cause of the failure so to deliver the child, or children, as provided for herein. This provision shall also be applicable in all cases of the division of a vacation in which the custody of the children passes from one party to the other. Each party shall cause prompt notice in writing to be sent to the other of any change of residence, in which notice the address of such new place of residence shall be stated.

4. (a) That, after February 5, 1923, the said children shall be educated in boarding schools, boarding academies, or boarding colleges, located in the State of New York. The First Party, for that purpose, shall submit to the Second Party a list of three schools, academies or colleges, and thereupon the Second Party shall immediately select therefrom one to which the children shall be sent.

(b) That the expenses of educating said children shall be borne by the First Party, but the Second Party, if he so desires, shall have the right to pay any, or all, of the expenses of educating said children.

(c) That, if for any cause said children, or either of them, shall not be placed in, and remain in, a boarding school, boarding academy, or boarding college, during any part of the regular school, academic or college year, as the case may be (apart from any vacation period), such child or children, as the case may be, shall be placed in the custody of the parties hereto alternately, and for equal periods.

5. That, between the date of the agreement and the time when the said children shall be sent to boarding school, as herein provided, they shall be under the care and custody of a governess selected and paid by the First Party; but such governess shall be satisfactory to the Second Party. The board and lodging of the governess shall be furnished by, and at the expense of, the party in whose care the children shall be during the various periods mentioned in this agreement.

6. That, during the time that said children are in the care and

custody of either party, during the years 1923, 1924 and 1925, each of the parties hereto shall have the right to have said children visit him, or her, between the hours of 9 A.M. and 6 P.M., not more than four days in every month; provided, however, that, in order to make said visit, said children are not required to leave the city, or town, where they may then be residing. Each party shall, in writing, notify the governess in charge of the children at least twelve hours in advance of the time fixed for the visit of the children, of his, or her, desire for such visit, and, in such notice, shall state the place where the children shall be sent, and the time therefor. Neither party, however, shall have the right to visit said children in the house, or place, where they may be living, except as otherwise provided in paragraph "7" hereof.

7. That, in case of the illness, or sickness, of either, or both, of said children, requiring the attendance of a physician, or surgeon, the party in whose custody said child or children may then be shall cause prompt notice to be given to the other party, either by mail, telegram or telephone, of such illness, or sickness, and the party so to be notified shall have the right to consult the attending physician, or surgeon, in connection therewith. Said children, or either of them, if suffering from sickness or illness which, in the opinion of the attending physician or surgeon shall, or may, be of a serious or dangerous character, or may be of long, or lasting, duration, may, upon his direction, be sent to a private sanitarium, or hospital, for medical attention, during the term of said illness or sickness, and the party in whose custody said child or children may then be shall cause prompt notice of the name and location of such sanitarium, or hospital, to be furnished to the other party hereto, and the latter party may thereupon visit such child, or children, at such sanitarium or hospital, during the period of the illness. If the child or children shall not be sent to a private sanitarium, or hospital, but is, or are, suffering from a serious, or dangerous illness, or one of long or lasting duration, then the other party shall have the right, from time to time, to visit said child, or children, at the home, or place, in which either child may then be living.

8. That each party hereto shall have the right to visit said children as often as such party may desire, while such children are at boarding schools, boarding academies or boarding colleges, sub-

ject, nevertheless, to the rules and regulations of such school, academy or college.

9. That the summer vacation of the children, and their other vacation periods, shall be divided equally between the parties hereto, so that the first half of the vacation period shall be spent with each of the parties hereto in alternate years; and the first half of the first such vacation period shall be spent with the First Party.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Jane Doe (L.S.).

In the presence of
John Jones.

No. 191.

Agreement between husband and wife, whereunder husband agrees to appear in divorce action pending in foreign state and provision is made for the custody of children, and each party agrees to execute a bond to insure performance of the agreement.⁸

AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Main Street, Binghamton, New York (herein called the "First Party"), and Jane Doe, residing at No. 371½ Main Street, Boise City, State of Idaho (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That the First Party agrees to appear in the certain action, now pending in the District Court for the Third Judicial District of the State of Idaho, in and for the County of Ada, wherein the Second Party is the plaintiff, and the First Party is the defendant; and, for that purpose, the First Party hereby agrees, by an instrument duly acknowledged, to authorize an attorney to appear for him in said action, and to cause such attorney, in his behalf, to serve a notice of appearance on Koe & Koe, Esqs., attorneys for the Second Party in said action.

2. That the First Party shall have the right to defend such

⁸ Adapted from *LaMoutte v. Title Guaranty & Surety Co.* (1917), 221 N. Y. 690, 117 N. E. 1073.

action upon any and all grounds, which he may be advised by counsel are defenses thereto.

3. That the Second Party agrees that the complaint in the said action shall not be amended, except in so far as may be necessary to make effective the intention of the parties with respect to the care and custody of their children, as set forth in the agreement hereto annexed, and hereby made a part hereof; and the Second Party hereby agrees that she will not, in such action, seek to obtain any custody of the said children in any way inconsistent with the provisions of such agreement.

4. That the parties hereto shall, contemporaneously with the execution of this agreement, execute in duplicate the agreement providing for the custody of their children, John Doe, Jr., and Mary Doe, which is hereto annexed, and shall deposit such duplicate original agreements, signed and acknowledged by them, with John Koe, who shall deliver to each party a receipt therefor.

5. That, simultaneously with the execution and deposit of such agreements, the Second Party shall pay to and deposit with said John Koe the sum of six hundred and fifty (\$650) dollars, and contemporaneously therewith the First Party shall deposit with the said John Koe a duly executed release, releasing and discharging the Second Party from all claims and demands of any kind whatsoever, in respect of any personal property of the First Party, which now is in the possession of the Second Party.

6. That the Second Party shall deliver to the First Party, at No. 11½ Broadway, Borough of Manhattan, New York City, the furniture described in the schedule hereto annexed, marked "Exhibit A," within three (3) days after the granting and entry of a decree in the aforementioned action in the District Court for the Third Judicial District of the State of Idaho.

7. (a) That the parties hereto agree that they will deposit with the said John Koe, simultaneously with the execution of this agreement, separate bonds in the sum of five thousand (\$5,000) dollars, which shall continue in force until September 13, 1923, and which shall be conditioned for the delivery of the said children by the Second Party to the First Party, within fifteen (15) days after the entry of a decree in her favor in the said action now pending in the State of Idaho, and conditioned, also, for the faithful performance by the parties hereto, severally, of all covenants, conditions and provisions of this agreement, and of all the

covenants, conditions and provisions of the annexed agreement, relating to the custody, education and maintenance of said children. Each bond shall contain a provision that, in case of default by the party thereto in performing any of the conditions, covenants and provisions in either of the agreements between the parties hereto, the bond of the party not in default shall immediately become null and void, and that this nullification and termination of such bond shall be in addition to the payment of the five thousand (\$5,000) dollars provided for by the bond given by the party in default.

(b) It is expressly agreed that the payment of five thousand (\$5,000) dollars by, or for, the party in default, and the annulment of the bond given by the other party, shall not be in full reparation of such default, but that the party not in default shall, in addition, have such rights and remedies for the enforcement of the provisions of the proposed amended judgment referred to in the next paragraph hereof, as the law provides, including the enforcement of such judgment, by contempt proceedings, or otherwise, the making of a modified judgment granting further and fuller rights to the party not in default, and such other rights and remedies as to the court may seem just, proper and effective in relation to said judgment.

8. That the parties hereto agree to execute, acknowledge, and deposit with the said John Koe, simultaneously herewith, a stipulation consenting to the modification of the judgment of separation entered and filed in the office of the clerk of the County of New York on March 30, 1921, by changing the paragraph thereof marked "2nd," so that it shall conform to the provisions of the annexed agreement, relating to the custody, education and maintenance of their children, and by cancelling and annulling the paragraph of said judgment marked "3d."

9. That, if the First Party shall appear in the action now pending in the said District Court of Idaho, by an attorney duly authorized to appear for him therein, and shall execute and deposit the several papers, as herein provided for, and if the Second Party shall obtain in said action an absolute decree of divorce from the said First Party, the Second Party hereby covenants and agrees to deliver, at Binghamton, New York, into the care and custody of the First Party, the two children, John Doe, Jr., and Mary Doe, within fifteen (15) days after the granting of said decree; to be

held by said First Party, pursuant to the terms of the annexed agreement relating to the custody, education and maintenance of the said children.

10. (a) That the said John Koe shall be, and he hereby is expressly, authorized, empowered and directed to deliver to the First Party herewith, all papers and documents deposited hereunder by the Second Party, and to deliver to the Second Party all the papers and documents deposited hereunder by the First Party, upon the granting of the decree of divorce in favor of the Second Party in said action in Idaho.

(b) That such delivery shall be made by the said John Koe, upon the service upon him of:

(1) An exemplified copy of said decree, by either the First or Second Parties; or

(2) A written consent thereto, signed by Richard Roe, attorney for the First Party, and Koe & Koe, attorneys for the Second Party.

(c) That, if the said suit shall be withdrawn, discontinued, or dismissed, for any cause whatsoever, the said John Koe shall be, and he hereby is expressly, authorized, empowered and directed, to return all papers, and documents deposited by the Second Party to Koe & Koe and all papers and documents deposited by the First Party to Richard Roe.

11. That no waiver by either of the parties of any of his, or her, rights under any of the provisions of any of the agreements, decrees, stipulations, bonds and other writings between the parties hereto, herein referred to, shall operate, directly or indirectly, thereafter to impair any of the rights of either party under any of said agreements, decrees, bonds, stipulations, and other writings; and all of such agreements, decrees, bonds, stipulations, and other writings, shall, after such waiver, continue with the same force and effect, as if such waiver had not been made.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Jane Doe (L.S.).

In the presence of

John Jones.

[Annex Agreement of Custody and Schedule of Furniture.]

CHAPTER X

INDEMNITOR AND INDEMNITEE

- No. 192—Bond to indemnify buyer of business against seller's breach of negative covenant not to compete, whereunder liquidated damages are provided for.
- No. 193—Bond to indemnify corporation, upon issuing new certificate in lieu of lost or destroyed certificate.
- No. 194—Bond to indemnify person from loss and liability as stockholder, or officer, of corporation.
- No. 195—Bond to indemnify sheriff against acts of special deputy, with affidavit showing indemnitor's financial responsibility.
- No. 196—Bond to indemnify sureties on bond of executors.
- No. 197—Bond to indemnify surety for executing a bond in behalf of minor.

No. 192.

Bond to indemnify buyer of business against seller's breach of negative covenant not to compete, whereunder liquidated damages are provided for.¹

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, am held and firmly bound unto the Richard Roe Co., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 23½ William Street, Borough of Manhattan, New York City, in the sum of ten thousand (\$10,000) dollars, lawful money of the United States of America, to be paid to the said Richard Roe Co., its successors, or assigns, to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

¹ Adapted from *Diamond Match Co. v. Roeber* (1887), 106 N. Y. 473, 13 N. E. 419.

Sealed with my seal, at New York City, this 5th day of January, 1923.

WHEREAS, the said John Doe heretofore, and up to the day of the date hereof, was engaged in and carried on, the business of manufacturing friction matches, at No. 23½ Broadway, Borough of Manhattan, New York City, selling said matches, or causing the same to be sold, in the several states of the United States of America, and territories thereof, and in the District of Columbia; and

WHEREAS, said John Doe, for, and in consideration of the sum of thirty thousand (\$30,000) dollars, to him in hand paid by the said Richard Roe Co., has, by indenture and bill of sale, bearing even date herewith, granted, bargained and sold unto the said Richard Roe Co., all of his, the said John Doe's, land and premises, situated at No. 23½ Broadway, Borough of Manhattan, New York City, with the friction match factory thereon erected, together with all the machinery, tools and fixtures therein, and all the matches manufactured, and in process of manufacture, with all the materials of every kind whatsoever used in the manufacture of matches, together with the whole of the good-will of the said match business, with the sole right to the use of the name, trade-marks and labels adopted and used by the said John Doe, in manufacturing and exposing and offering for sale, and in selling, said matches, including the interest and rights of said John Doe, in and to the use of, the label, known as the "Doe label", and his, the said John Doe's, right to manufacture the "Doe match"; and

WHEREAS, as part of the consideration for the said sum of thirty thousand (\$30,000) dollars so paid to the said John Doe, as aforesaid, he, the said John Doe, has agreed, and by these presents does agree, to and with the said Richard Roe Co., that he, the said John Doe, shall not, and will not, at any time, or times, within ninety-nine (99) years from the date hereof (excepting in the capacity as agent, or employe, of the said Richard Roe Co.) directly or indirectly, engage in the manufacture, or sale, or be, in any way, or manner, whatsoever, interested in the manufacture, or sale, of friction matches, within any of the several states of the United States, or the territories thereof, or within the District of Columbia, excepting and reserving, however, the right to manufacture and sell friction matches in the States of Nevada and Montana:

NOW, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the

said John Doe shall not, and will not, at any time, or times, within ninety-nine (99) years from the date hereof, directly or indirectly, engage, or be, in any manner whatsoever, interested, in the manufacture, or sale, of friction matches within any of the several states of the United States of America, or the territories thereof, or within the District of Columbia, excepting within the States of Nevada and Montana, as aforesaid, then this obligation shall be void; otherwise to be and remain in full force and virtue, and the said sum of ten thousand (\$10,000) dollars to be recovered and paid to the said Richard Roe Co., as and for liquidated damages.

John Doe (L.S.).

In the presence of
John Jones.

No. 193.

Bond to indemnify corporation, upon issuing new certificate in lieu of lost or destroyed certificate.²

KNOW ALL MEN BY THESE PRESENTS, that we, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, as principal, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, as surety, are held and firmly bound unto the Koe Chemical Company, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal place of business at No. 25½ William Street, Borough of Manhattan, New York City, in the sum of five thousand (\$5,000) dollars, lawful money of the United States of America, to be paid to the said corporation, or its successors in interest, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed, sealed and delivered, this 5th day of January, 1923.

WHEREAS, the said Koe Chemical Company, Inc., duly and regularly issued to the said John Doe, a certificate numbered 10, and dated January 5th, 1922, representing three hundred (300) shares of the capital stock of the said Koe Chemical Company, Inc. (par value one hundred dollars each); and

WHEREAS, the aforesaid principal alleges that the said certificate has been lost or destroyed, and desires the Koe Chemical Company,

² Cf. *New York Consol. Laws* (1909), Ch. 59, sec. 68.

Inc., to issue a new certificate, in lieu of such lost or destroyed certificate; and

WHEREAS, the said Koe Chemical Company, Inc., is willing to issue and deliver to the said principal a new certificate for said three hundred shares of its capital stock, if the said principal shall deliver to it a bond in the sum of five thousand (\$5,000) dollars, as indemnity against any claim that may be made against such corporation by reason of the issuance of either, or both, of said certificates of stock:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the said John Doe, his heirs, executors or administrators, shall, at all times hereafter, well and truly save and keep the said Koe Chemical Company, Inc., and its successors in interest, safe and harmless of and from all demands, claims, actions, or causes of action, losses, damages, and attorneys' fees, arising from, or growing out of, either of the aforesaid certificates of stock, or the issuance thereof, and shall well and truly pay to the said Koe Chemical Company, Inc., or to its successors in interest, on demand, any and all moneys that it may be required to pay, in any way, manner or form, in connection therewith, or shall deliver to the said Koe Chemical Company, Inc., for cancellation, the said certificate numbered 10, then this obligation shall be void; and otherwise it shall remain in full force and effect.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of
John Jones.

No. 194.

Bond to indemnify person from loss and liability as stockholder, or officer, of corporation.³

KNOW ALL MEN, that—

WHEREAS, John Doe, residing at No. 11½ Main Street, City of Mobile, State of Alabama, is about to become a stockholder and officer of the Doe Bridge Co., a corporation, duly organized under the laws of the State of Alabama:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that, if we, Richard Roe and Henry Roe, both residing at No. 37½

³ Adapted from *Ridgell v. Dale* (1849), 16 Ala. 36.

Main Street, City of Mobile, State of Alabama, shall forever indemnify and hold harmless the said John Doe from all loss and liability, which he may incur as a stockholder, or officer, of the Doe Bridge Co., then this obligation is to be void; otherwise, it shall remain in full force and virtue.

WITNESS, our hands and seals, this 5th day of January, 1923.

Richard Roe (L.S.).

Henry Roe (L.S.).

In the presence of

John Jones.

No. 195.

Bond to indemnify sheriff against acts of special deputy, with affidavit showing indemnitor's financial responsibility.⁴

KNOW ALL MEN, that we, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Principal"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Surety"), are held and firmly bound unto Henry Koe, Sheriff of the County of New York, State of New York, in the sum of ten thousand (\$10,000) dollars, to be paid to the said Henry Koe, or his certain attorney, heirs, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, at New York City, this 5th day of January, 1923.

John Doe (L.S.).

Richard Roe (L.S.).

WHEREAS, the above named John Doe is about to be appointed a Special Deputy Sheriff by said Henry Koe, and may hereafter be appointed and designated as a Special Deputy Sheriff by said Henry Koe, Sheriff of the said County of New York, and is about to enter upon the discharge of the duties of his said office:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the said John Doe shall well, faithfully and truly, in all

⁴ Cf. *Hubert v. Wendheim* (1883), 64 Cal. 213, 30 Pac. 633; *Barnard v. Darling* (1833), 11 Wend. (N. Y.) 28; *Briggs v. Finton* (1884), 82 Tenn. 233.

things, perform, execute and discharge the duties of the said office of such Special Deputy Sheriff, and if the said Principal, John Doe, and the said Surety, Richard Roe, their heirs, executors, administrators, successors and assigns, and each of them, do and shall, from time to time, and, at all times hereafter, save and keep harmless and indemnified the said Henry Koe, individually, or as Sheriff, as aforesaid, his heirs, executors, and administrators, and each of them, and all of their goods and chattels, lands and tenements, of, from and against all issues, fines, demands, damages, costs, liabilities, counsel fees and charges whatsoever hereafter to be produced, imposed, prosecuted, demanded, or demandable, of, or against, the said Henry Koe, individually, or as Sheriff as aforesaid, his heirs, executors, or administrators, or his, or their, goods, or chattels, lands, or tenements, for, or by reason of, the discharge, or performance, of the duties of said office of such Special Deputy Sheriff, and of any neglect of any kind whatsoever of the said John Doe to perform his duties, and of any other neglect of any kind whatsoever of the said John Doe in discharging, or performing, the duties of said office of such Special Deputy Sheriff, or in executing, improperly or wrongfully, or neglecting to execute, the said office of such Special Deputy Sheriff, and, also, for, or by reason of, any manner of nonfeasance, malfeasance, or malconduct, of the said John Doe in any wise touching the execution, or performance, of said office, or position, of such Special Deputy Sheriff, or, in any other, employment under said Sheriff, then the above obligation to be void, and of no effect; else to be and remain in full force and virtue; but an extension of time granted to said John Doe to comply with the obligations of this bond shall not release the Surety.

We hereby expressly waive notice of any suit, action, or proceedings of whatever name, or nature, against the said Henry Koe, for, or by reason of, any such neglect, omission, nonfeasance, misfeasance, or malconduct, and expressly stipulate and agree that the recovery against said Henry Koe of any judgment, or the making of any order imposing any fine, cost, charge or liability upon said Henry Koe, for, or by reason of, the matter, or matters, aforesaid, shall be conclusive evidence of our liability to him under this bond, for the full amount which he may, by the terms of any such judgment, or order, be adjudged, or required, to pay, together with the

lawful interest thereon, and all costs, counsel fees, and expenses incurred by him in the defense of any such suit, action, or proceeding.

And the said Surety covenants, stipulates, consents and agrees, in case any action, or actions, proceeding, or proceedings, be begun against the above named Henry Koe, individually, or as Sheriff of the County of New York, his successors or successor, executors, or administrators, for, or by reason of, the discharge, or performance, of the duties of said office of such Special Deputy Sheriff, and of any neglect of any kind whatsoever of the said John Doe to perform his duties, and of any other neglect of any kind whatsoever of the said John Doe in discharging, or performing, the duties of said office of such Special Deputy Sheriff, or in executing improperly, or wrongfully, or neglecting to execute, the said office of such Special Deputy Sheriff, and, also, for, or by reason of, any manner of nonfeasance, misfeasance, malfeasance, or malconduct, of the said John Doe, in any wise, touching the execution, or performance, of said office, or position, of such Special Deputy Sheriff, or in any other employment under said Sheriff, that the attorney for the above named Henry Koe, individually, or as Sheriff as aforesaid, or the attorney for his successor, or successors, executors, or administrators, may, and he is hereby retained, employed, directed and authorized, for, and in behalf of, the said Surety, his successors, or successor, executors, administrators, or assigns, without charge for such services, to move in any court in which any such action, or proceeding, shall be begun, or maintained, to have the said Surety, or his successor, or successors, executors, administrators, or assigns, substituted in the place and stead of the said Henry Koe, individually, or as Sheriff as aforesaid, as defendant in said action, actions, proceeding, or proceedings, and that, upon the entry of an order granting said application, said Henry Koe shall be released from all liability therein, individually, or as Sheriff as aforesaid, and that the summons and complaint and all papers in said action, actions, proceeding, or proceedings, shall be amended by striking out the name of Henry Koe individually, or as Sheriff, as aforesaid, in the title thereof, and substituting, in lieu and place thereof, the said Surety, his successor, or successors, executors, administrators, or assigns, and that said summons, complaint and papers in said action, or actions, proceeding or proceedings shall be further amended, as may be necessary, by the changed condition of the action, or actions, or proceeding, or proceedings.

And the said Surety hereby covenants and agrees to be so substituted, without further notice.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

STATE OF NEW YORK, }
CITY OF NEW YORK, } SS:
COUNTY OF NEW YORK }

RICHARD ROE, the within-named surety, being duly sworn, says: that he is a resident and free-holder within the said County and State, and is worth twenty thousand (\$20,000) dollars, exclusive of property exempt from execution, and over and above the amount of all his debts and liabilities, and that his property consists of the premises, known as No. 11½ Broadway, Borough of Manhattan, New York City, the title to which is of record in the deponent's name in the office of the register of the city and county of New York; that the same is of the value of not less than fifty thousand (\$50,000) dollars, and is subject to no incumbrances, except a mortgage of thirty thousand (\$30,000) dollars.

Richard Roe.

Sworn to before me, this 5th day of January, 1923.

John Doe,

Notary Public, New York County, No. 2876A.

Commission expires January 5, 1926.

No. 196.

Bond to indemnify sureties on bond of executors.⁵

KNOW ALL MEN, that we, John Doe and Richard Roe, both residing at No. 37½ Main Street, Columbus, Ohio, are held and firmly bound unto Henry Koe and Richard Koe, both residing at No. 11½ Main Street, Columbus, Ohio, in the sum of one thousand (\$1,000) dollars, for the payment of which, well and truly to be made, we do hereby bind ourselves, our heirs, executors and administrators.

⁵ Adapted from *Buffington v. Bronson* (1899), 61 Ohio St. 231, 56 N. E. 762.

WITNESS our hands and seals, this 5th day of January, 1923.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

WHEREAS, the above named Henry Koe and Richard Koe are sureties under a certain bond, for the said John Doe, as executor of the estate of Henry Doe, deceased:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the said John Doe shall save and keep the said Henry Koe and Richard Koe harmless from all loss, or damage, by reason of being sureties on the said bond for the said John Doe, as such executor of the estate of Henry Doe, deceased, then this obligation to be void; otherwise, to be and remain in full force and virtue in law.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, this 5th day of January, 1923.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

No. 197.

Bond to indemnify surety for executing a bond in behalf of minor.⁶

KNOW ALL MEN, that, in consideration of the issuing of a bond of guaranty by the Doe Surety Co., of Chicago, Illinois, to Richard Roe, on behalf of one Henry Koe, who is a minor, I, Jane Koe, residing at No. 11½ State Street, City of Chicago, State of Illinois, do hereby agree that I will protect and immediately indemnify the said Doe Surety Co. against any and all claims, damages, or expenses, that it may sustain, or become liable for, in consequence of such bond, or any renewal, or extension, thereof.

And I hereby covenant and agree that the vouchers, or other proper evidence, showing payment by said Doe Surety Co. of any such loss, damage, or expense, shall be conclusive evidence (except

⁶ Adapted from *Illinois Surety Co. v. Maguire* (1914), 157 Wis. 49, 145 N. W. 768.

for fraud) against me and my estate, of the fact and amount of my liability hereunder to the said Doe Surety Co.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

Jane Koe (L.S.).

In the presence of
John Jones.

CHAPTER XI

JOINT ADVENTURERS

- No. 198—Agreement for formation of corporation to acquire license to manufacture and sell patented device.
- No. 199—Agreement for formation of syndicate to purchase railroad and other properties.
- No. 200—Agreement whereunder owner of oil lease agrees to drill well with money supplied by coadventurers, upon profit-sharing basis.
- No. 201—Agreement whereunder several corporations agree to sell their businesses to new corporation to be formed, under direction of an organization committee.
- No. 202—Agreement whereunder partners and corporations agree to form new corporation and partners agree to sell their business, trade-marks, trade-names, processes, etc., to new corporation with covenants to enter employ of new corporation, instruct its agents in the use of formulæ and not otherwise to engage in the same business for twenty years.
- No. 203—Agreement to operate a department in store of one adventurer, upon profit-sharing basis.

No. 198.

Agreement for formation of corporation to acquire license to manufacture and sell patented device.¹

THIS AGREEMENT, made January 5, 1923, by John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, and Richard Roe, residing at No. 15½ Broadway, Borough of Manhattan, New York City (herein called the "First Parties"), and Henry Koe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

¹ Adapted from *Sanders v. Barnaby* (1916), 173 App. Div. 244, 159 N. Y. Supp. 579.

WHEREAS, the First Parties, on or about December 22, 1922, entered into a contract with the Koe Advertising Co., Inc., whereunder the First Parties acquired the sole and exclusive right to manufacture, sell and distribute in the states of New York and New Jersey, the certain patented device of the Koe Advertising Co., Inc., known as "The Invisible Insert"; and

WHEREAS, in order properly to develop the manufacture, sale and distribution of the said patented device in the states of New York and New Jersey, the First Parties have agreed to give such time as may be necessary to the business of manufacturing, selling and distributing the same, and the Second Party has agreed to furnish certain moneys in connection therewith; and

WHEREAS, it is deemed advisable to form a corporation, for the purpose of conducting the business of manufacturing, selling and distributing the aforesaid patented device:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the parties hereto shall organize, or cause to be organized, under the laws of the State of New York, a corporation, which shall be known as the "Doe Advertising Co., Inc.," or by such other name as the parties hereto shall select.

2. That the purposes for which said corporation shall be formed are, as follows:

(a) To acquire the aforesaid rights of the First Parties, and to manufacture, under the same, and to use, sell, lease and otherwise dispose of, the patented device, known as "The Invisible Insert," and otherwise turn to account and profit the rights so acquired by the corporation.

(b) To manufacture, buy, sell and deal in and with all kinds of goods, wares and merchandise, excepting gold and silver bullion, foreign coins and bills of exchange.

3. That the capital stock of such corporation shall consist of one thousand (1,000) shares of common stock of the par value of one hundred (\$100) dollars each, and one thousand (1,000) shares of seven (7%) per cent cumulative preferred stock, of the par value of one hundred (\$100) dollars each. That such preferred stock shall be divided into two classes, each of which shall consist of five hundred (500) shares, and which classes of stock shall be known, respectively, as "Class A" and "Class B"; that Class A preferred stock shall possess the usual voting powers; but that Class B preferred stock shall have no voting power, except in such cases where

the same specifically is conferred by statute; and that such Class B preferred stock may be retired by the corporation, at any time, at one hundred and five (\$105) dollars per share.

4. That such corporation shall begin business with a capital of five hundred (\$500) dollars.

5. That the principal office of the corporation shall be located in the Borough of Manhattan, County, City and State of New York.

6. That the duration of such corporation shall be perpetual.

7. That the number of directors of said corporation shall be three, and that the names and post-office addresses of the directors for the first year shall be, as follows:

NAMES.	POST-OFFICE ADDRESSES.
John Doe,	No. 11½ Broadway, Borough of Manhattan, New York City.
Richard Roe,	No. 15½ Broadway, Borough of Manhattan, New York City.
Henry Koe,	No. 37½ Broadway, Borough of Manhattan, New York City.

8. That the names and post-office addresses of the subscribers to the certificate of incorporation of such corporation, and the number of shares which each agrees to subscribe for in and by such certificate of incorporation, shall be, as follows:

NAMES.	POST-OFFICE ADDRESSES.	NUMBER OF SHARES.
John Doe,	No. 11½ Broadway, Borough of Manhattan, New York City,	2
Richard Roe,	No. 15½ Broadway, Borough of Manhattan, New York City,	2
Henry Koe,	No. 37½ Broadway, Borough of Manhattan, New York City,	1

9. That the officers of such corporation, for the first year, shall be the following:

John Doe,	President.
Richard Roe,	Vice-President.
Henry Koe,	Secretary and Treasurer.

10. That, immediately upon its organization, the First Parties shall assign to such corporation all of their right, title and interest in their aforesaid contract with the Koe Advertising Co., Inc., and shall accept, in full payment and satisfaction thereof, five hundred

(500) shares of the common stock, and three hundred (300) shares of Class A preferred stock, of such corporation.

11. That, immediately upon its organization, the Second Party shall subscribe and pay for all of the Class B preferred stock of such corporation, at par; and, in consideration thereof, the First Parties agree to assign, transfer and set over to the Second Party five hundred (500) shares of the common stock, and one hundred and fifty (150) shares of Class A preferred stock, so to be received by the First Parties, as aforesaid.

12. That the certificate of incorporation, or the by-laws, of such corporation shall contain a provision that all certificates of stock, checks, or orders for the payment of money, shall be signed by the treasurer of such corporation, and countersigned by the president, or vice-president, thereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

Henry Koe (L.S.).

In the presence of
John Jones.

No. 199.

Agreement for formation of syndicate to purchase railroad and other properties.²

THIS AGREEMENT, made January 5, 1923, by John Doe, Richard Roe and Henry Koe, herein called the "Syndicate Managers," parties of the first part, and the Syndicate Subscribers hereto, severally, parties of the second part, of whom each is herein termed the "Syndicate Subscriber," and all of whom, together with the said John Doe, Richard Roe and Henry Koe, constitute the Syndicate, WITNESSETH:

WHEREAS, it is proposed by the Syndicate Managers (1) to purchase the Little Jones Railroad, a line of railroad, extending a distance of about thirty (30) miles from Jonesville, West Virginia, up to the Little Kanawha River, (2) to extend the same eastwardly, (3) to purchase, or build, a railway from Jonesville, West Vir-

² Adapted from *Jones v. Gould* (1913), 209 N. Y. 419, 103 N. E. 720.

ginia, to Zanesville, Ohio, and (4) to purchase coal lands in West Virginia; and

WHEREAS, for the purpose of providing the necessary money for the purposes herein set forth, the said Syndicate Managers, and the Subscribers hereto, wish to form a Syndicate, to advance the necessary money, to the amount of six million (\$6,000,000) dollars, for the purposes hereinafter set forth:

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES, AND OF THEIR MUTUAL PROMISES, THE PARTIES HERETO, AND THE SYNDICATE OF SUBSCRIBERS, SEVERALLY, AGREE WITH EACH OTHER AND WITH THE SYNDICATE MANAGERS, AS FOLLOWS:

I.

The parties hereto form a Syndicate (to be styled the "Little Jonesville Syndicate"), for the purposes of acquiring and purchasing said railroad properties and other properties hereinbefore described, upon terms satisfactory to the Syndicate Managers, and, having acquired the same, of improving, extending, merging, operating, controlling and disposing of the same, as may be determined by the Syndicate Managers to be for the benefit of such Syndicate.

II.

(a) Each Subscriber hereto, and to any counterpart hereof, shall set opposite his name the amount of his subscription to the Syndicate; and each Subscriber shall be called upon to pay, and be liable only for, such amount as shall bear, to the obligation of the Syndicate, not exceeding eight million (\$8,000,000) dollars, the same ratio, or proportion, as his subscription bears to said maximum obligation. In the event that more than the aggregate amount of six million (\$6,000,000) dollars shall be subscribed, the Syndicate Managers may reduce any, or all, subscriptions hereto in such amount, in their discretion, as shall make the aggregate subscription six million (\$6,000,000) dollars; and, in case any such reduction shall be made, the Syndicate Managers shall notify the Subscribers whose subscriptions shall have been reduced of the amount of such reduction; or the Syndicate Managers may, in their discretion, accept subscriptions in excess of six million (\$6,000,000) dollars, provided that the maximum amount shall not, in any event, exceed eight million (\$8,000,000) dollars.

(b) The funds of the Syndicate shall be applied, used, and disbursed by the Syndicate Managers, for the purposes above set forth, and for such other purposes as may become necessary in carrying out the Syndicate plans.

III.

(a) The said Syndicate Managers agree to proceed, with reasonable diligence, to construct, or purchase, the said railway properties and the other properties hereinbefore mentioned, at such prices and upon such terms of payment as shall, in their judgment, be the best obtainable in the circumstances.

(b) The Syndicate Subscribers irrevocably nominate and appoint the Syndicate Managers, and the survivor, or survivors, of them, their agents and attorneys, with full power and authority to do any and all acts, and enter into any and all agreements, or other instruments, necessary, or proper, or by the Syndicate Managers deemed expedient in the premises, to carry out and perform the said agreements to construct, or purchase, said properties, and to carry out and perform the purposes of this Syndicate Agreement, and, to that end, absolutely to control the property so to be purchased, or constructed, as fully, in all respects, as if they were the absolute owners thereof, with power to borrow money thereon and pledge the property and Syndicate Subscriptions, or any portion thereof, as security therefor, and to sell and dispose of the same, upon such terms as may be, in their judgment, for the interests of this Syndicate, and, in like manner, to hold, manage, control and dispose of, in their discretion, any and all stocks and securities acquired on any sale, or disposal, of said property, or any part thereof.

IV.

Unless sooner terminated by the Syndicate Managers, in their discretion, and upon notice to the Syndicate Subscribers, this agreement shall continue in force and operation, for the period of three (3) years from the date hereof, and for such further period thereafter as the Syndicate Managers, in their discretion, find reasonably necessary, or advisable, in the interests of the Syndicate Subscribers.

V.

(a) The Syndicate Subscribers will, from time to time, and at any time, upon call of the Syndicate Managers, and to the amount of such call, or calls, make cash payments on account of their respective subscriptions hereunder, upon ten (10) days' written notice by mail from the Syndicate Managers.

(b) All payments hereunder, from time to time, by the Syndicate Subscribers shall be made to the Trust Company, designated in such call, for the account of the Syndicate Managers.

(c) Each Subscriber shall, at the time of making each payment called hereunder, receive a certificate issued by said Trust Company, certifying the amount of such payment, and the interest of such Subscriber in said Syndicate, subject to the terms and conditions of this agreement. Such certificates shall be in assignable form, and shall be transferable only on the books of said Trust Company, by assignment and surrender of such certificates; and, upon such assignment and surrender, a new certificate shall be issued in the name of the transferee.

VI.

The Syndicate Managers shall have the sole direction, management and the entire conduct of the Syndicate, and the enumeration of particular, or specific, powers in this agreement shall not be considered as, in any way, limiting, or abridging, the general power, or discretion, intended to be conferred upon and reserved to the Syndicate Managers, in order to authorize them to do any and all things proper, necessary, or expedient, in their discretion, to carry out the purposes of this agreement; neither shall they, or any of them, be liable under any of the provisions of this agreement, or in, or for, any matter connected therewith, except for want of good faith and the failure to exercise reasonable diligence.

VII.

(a) The Syndicate Managers shall be entitled to a commission of one and one-half ($1\frac{1}{2}\%$) per cent upon the amount of the subscriptions hereto, without any obligation to share the same with any Subscriber, or to account therefor to the Syndicate, or to any Subscriber.

(b) All expenses of the Syndicate Managers, including counsel fees, brokers' commissions and all other disbursements and expenses made by them, in connection with the carrying out of the purposes of this agreement, shall be a charge to the Syndicate, and all profits and losses of the Syndicate shall be divided and borne *pro rata*. The Syndicate Managers are to be Subscribers to the Syndicate, and, to the extent of any such subscription, or reservation, by them, they are to participate in the profits and losses to the same extent as other Subscribers.

(c) Should the Syndicate Managers, in the carrying out of this agreement, sell, or dispose, of said properties, or of stocks and securities received therefor, the net proceeds of such sale shall be distributed *pro rata* to the Subscribers, from time to time, in the discretion of the Syndicate Managers. Should such railroad properties not be sold, but be capitalized by the formation of a new company, or companies, of which company, or companies, the Syndicate Managers shall acquire the securities issued, or, should said new properties, or any part thereof, be disposed of for stock, which are not sold by the Syndicate Managers, then, after the payment of all expenses and commissions accruing under this agreement to said Syndicate Managers, and, upon the termination of the Syndicate, such securities, so acquired, shall be distributed *pro rata* to the subscribers hereto, or their assigns, as provided herein.

VIII.

(a) Each Syndicate Subscriber hereby ratifies, assents to and agrees to be bound by any action of the Syndicate Managers taken under this agreement, and agrees to perform all of his undertakings hereunder, from time to time, upon call of the Syndicate Managers, to the full extent of the amount set opposite his name, or allotted to him; but he shall be liable hereunder solely to the Syndicate Managers, or their assigns, only to the extent of his individual participation in the Syndicate.

(b) Each and every party hereto shall, upon reasonable request, execute and deliver all further writings, which may be necessary, or proper, to carry this agreement into effect.

(c) The failure of any Syndicate Subscriber to perform any of his undertakings hereunder shall not release, or affect, any other Syndicate Subscriber. The Syndicate Managers may, in their dis-

cretion, by written consent, release any Syndicate Subscriber. In case any Syndicate Subscriber shall fail to perform any of his undertakings hereunder, other Subscribers may be received by the Syndicate Managers and may take the share of the Subscriber so failing to perform his undertaking, or so released. Upon failure of any Syndicate Subscriber to perform any of his undertakings hereunder, the Syndicate Managers shall have the right, at their option, to exclude such Syndicate Subscriber from the further interest and participation in the Syndicate, and to hold him liable for all damages caused by his failure.

(d) Nothing herein contained, or otherwise, shall constitute the Syndicate Subscribers partners to the Syndicate Managers, or with one another, or render them liable to contribute more than their ratable amounts, as aforesaid, or entitle them to any participation in the results, or profits, of said Syndicate other than as specified in this agreement.

IX.

(a) This agreement shall bind and benefit, ratably, according to the amount of the several subscriptions, not only the parties hereto, but their respective successors, survivors, assigns and personal representatives.

(b) An original hereof shall be signed by the Syndicate Managers and deposited with the Trust Company, so to be designated by them, and counterparts thereof may be signed by the Syndicate Subscribers and retained by the Syndicate Managers, and all shall be taken and deemed one original instrument.

X.

(a) All notices issued by the Syndicate Managers hereunder shall be mailed to the addresses of the Subscribers as given below, opposite their respective names.

(b) The holding of certificates issued by said Trust Company shall constitute such holders parties to this agreement, as fully, to all intents and purposes, as if signing the same.

XI.

(a) It is agreed that the Syndicate Managers herein named may, at any time, in their discretion, appoint and associate with

themselves, in the performance of the duties imposed by this agreement, suitable persons as additional Syndicate Managers, and the persons so appointed shall, with those named in this agreement, possess and exercise all the powers conferred upon the Syndicate Managers, by the terms of this contract.

(b) Notices of such appointments, if made, shall be given to the Syndicate Subscribers.

IN WITNESS WHEREOF, the Syndicate Managers, the parties of the first part, have subscribed an original hereof, and the Syndicate Subscribers, parties of the second part, have subscribed said original, or counterparts thereof, as of the day and year first above written.

John Doe,
Richard Roe,
Henry Koe,
As Syndicate Managers.

SUBSCRIBERS:

<i>Name.</i>	<i>Address.</i>	<i>Amount.</i>
John Doe,	11½ Broadway, New York City,	\$100,000
Richard Roe,	37½ Broadway, New York City,	100,000
Henry Koe,	57½ Broadway, New York City,	100,000
John Jones,	11½ Broadway, New York City,	50,000

No. 200.

Agreement whereunder owner of oil lease agrees to drill well with money supplied by coadventurers, upon profit-sharing basis.³

THIS AGREEMENT, made January 5, 1923, by John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe and Henry Koe, both residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Parties"), WITNESSETH:

WHEREAS, the First Party, by virtue of divers mesne assignments, is the owner and holder of a certain oil and gas lease, bearing date the 6th day of February, 1921, made by John Smith,

³ Adapted from *Worms v. Lake* (1921), 198 App. Div. 776, 191 N. Y. Supp. 113.

of Fort Worth, Texas, to Henry Brown, of Waco, Texas, of all that certain piece of land, situate in the County of Eastland, State of Texas, bounded and described in said lease, as follows:

BEGINNING * * *

and

WHEREAS, the said lease is for a term of five (5) years from the day of its date, and for so long thereafter as oil and/or gas can be produced by the lessee or assignee thereof; and

WHEREAS, it is believed that oil and/or gas underlies the said land, and can be obtained by drilling wells thereon; and

WHEREAS, the parties hereto are desirous of sharing in the profits, if any, which may be derived from the oil and/or gas obtained from such wells:

Now, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the Second Parties shall contribute and pay to the First Party, upon the execution of this agreement, the sum of fifty thousand (\$50,000) dollars, and the First Party shall receive and keep such moneys separate and apart from his own moneys, and shall use and expend the same only for the purpose of diligently drilling a well on said land, to obtain oil and/or gas, and of purchasing, or constructing, on said land, such buildings, tanks, rigs, pipe lines, machinery, and other structures and appliances, as may be requisite in and about such work; and that, if the whole of the said sum of fifty thousand (\$50,000) dollars shall not be required for such purposes, the amount remaining unexpended shall be returned to the Second Parties.

2. That the First Party shall manage, direct and control the drilling of said well, and the sale, or other disposition, of the gas and/or oil, which may be obtained from such well, and shall manage, direct and control all other business connected with the enterprise hereby undertaken; but the First Party shall not receive, or be entitled to receive, any salary, or other compensation, for his services hereunder, other than his proportionate share of the profits, if any, herein provided for.

3. That the proceeds derived from the sale of any oil and/or gas, which may be obtained from each well, shall be used and expended for the purpose of drilling other wells, until the whole of the said land shall have been fully developed.

4. That, after the said land shall have been fully developed, the

profits derived from the sale of oil and/or gas obtained from wells drilled on said demised premises, after paying all the expenses incurred in the production and sale thereof, and in the conduct and management of the said business, and after paying a royalty of one-eighth part of all oil produced and saved from the said land, and all of the royalties for gas reserved in the said lease, shall be divided into two equal parts, and one of such parts shall be paid to the Second Parties, and the other of such two equal parts shall be paid to the First Party.

5. That, if the said sum of fifty thousand (\$50,000) dollars shall be used and expended in the manner and for the purposes hereinbefore provided, without completing such well, or without obtaining oil in paying quantities, if such wells shall have been completed, or should additional moneys be required to complete such well, the First Party shall have the right to procure such additional sums of money for such purposes, from persons other than the Second Parties, unless the Second Parties shall elect to pay and contribute such additional sums of money; and any person, or persons, other than the Second Parties, who shall contribute any such additional sums of money, for such purpose, shall be entitled to share in the one-half part of the net profits to be paid to the First Party, ratably, and in proportion to the amount of money already paid in and contributed by the Second Parties hereunder, and in proportion to the additional amounts of money so paid in and contributed by such other person, or persons, for the purpose of completing the said well.

6. That, if the said well, when completed, shall not produce oil in paying quantities, then the buildings, rigs, tanks, pipe-lines, machinery and other structures or appliances built, or procured out of the moneys contributed by the Second Parties, shall forthwith be sold, and the proceeds thereof shall be paid to the Second Parties.

7. That the First Party shall not enter into any contract, or obligation, nor incur any debts, for a sum greater than the sum of money paid hereunder by the Second Parties; and the Second Parties shall not be, nor be deemed to be, liable to pay any sums of money, other than the said sum of fifty thousand (\$50,000) dollars, in, or about, or in connection with, the enterprise hereinbefore undertaken.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

Henry Koe (L.S.).

In the presence of

John Smith.

No. 201.

Agreement whereunder several corporations agree to sell their businesses to new corporation to be formed, under direction of an organization committee.⁴

THIS AGREEMENT, made January 5, 1923, by Doe Aniline & Chemical Works, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called "Doe"), Richard Roe Aniline & Chemical Works, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 15½ Broadway, Borough of Manhattan, New York City (herein called "Roe"), Koe Products Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 17½ Broadway, Borough of Manhattan, New York City (herein called "Koe"), Smith Chemical Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 19½ Broadway, Borough of Manhattan, New York City (herein called "Smith"), Doe Solvay Co., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 21½ Broadway, Borough of Manhattan, New York City (herein called "Solvay"), The Brown Company, a corporation (herein called "Brown"), duly organized under the laws of the State of New Jersey, and having its principal office at No. 11½ Broad Street, Newark, New Jersey, (all of which six corporations hereinabove named will be hereinafter sometimes called the "Vendors"), and the ten persons herein constituted the Organization Committee, and the five persons herein constituted the Appraisal Committee, WITNESSETH:

⁴ Cf. *Rogers v. Penobscot Mining Co.* (1907), 154 Fed. Rep. 606, 83 C. C. A. 380; *Crichfield v. Julia* (1906), 147 Fed. Rep. 65, 77 C. C. A. 297; *Perren v. Smith* (1909), 135 App. Div. 127, 119 N. Y. Supp. 990.

WHEREAS, each Vendor is manufacturing, or endeavoring to manufacture, one, or more, of the chemical products of coal tar, the present and prospective products of each being (with minor exceptions) different from those of the others; and

WHEREAS, the manufacture of each of such products is closely related to the manufacture of the others, so that such products can be manufactured together more efficiently and economically than they can be separately manufactured; and

WHEREAS, it is, therefore, proposed that a corporation (herein sometimes called the "Company") shall be organized, as herein-after stated, for the purpose of manufacturing such products generally, and that the Company, when organized, shall acquire from each Vendor such of its properties as will be advantageous to the Company in the conduct of its business; and

WHEREAS, Smith, Brown and Solvay, each, owns one-third of the outstanding capital stock of Koe:

NOW, THEREFORE, each of the parties hereto, for itself, and not for any of the others, hereby agrees with each, and all, of the others, and with the Company, when organized, as follows:

I. EXECUTION AND AUTHORIZATION.

1. *Execution.*

This agreement shall go into effect as soon as (a) all the parties hereto shall properly execute the same in six counterparts, and (b) each Vendor shall duly acknowledge its execution of each such counterpart, including the order of its Board of Directors for such execution, and (c) one such counterpart, so executed and acknowledged, shall be delivered to each Vendor.

2. *Authorization.*

Each Vendor shall exercise its best efforts to procure, as promptly as practicable thereafter, such, if any, further authorizing action on the part of its directors and/or stockholders as, in the opinion of counsel to the Organization Committee, shall be necessary, or advisable, to the end that this agreement shall be of full force. If any such further action shall not be taken and certified to said Committee, within such time as it shall deem reasonable for the purpose, said Committee shall notify all of the Vendors in writing to that effect, stating that this agreement thereupon becomes void,

and thereupon it shall become, and thenceforth shall be, void, except that (a) each Committee shall thereupon return to each Vendor all written information furnished hereunder by such Vendor and in the possession, or under the control, of such Committee, and (b) the respective Vendors shall, upon request, reimburse each Committee for the amount of its expenses and liabilities theretofore incurred hereunder, in the following proportions, viz.: Doe, four-tenths; Roe and Smith, each, two-tenths; Brown and Solvay, each, one-tenth.

II. THE COMPANY.

1. *In General.*

The Company shall be organized by, or under the direction of, the Organization Committee, in such manner and form and otherwise, in all respects, as shall be determined, or approved, by said Committee, except only as herein expressly provided; thus, the name, specific purposes, authorized stock, principal office location, number of directors, personnel of directors for the first year, initial subscriptions and, generally, all provisions of the certificate of incorporation and proceedings for the organization of the Company shall be as determined, or approved, by said Committee, subject only to the express provisions of this agreement. In the discretion of said Committee, its members and/or members of the Appraisal Committee may be incorporators, subscribers and/or directors of the Company.

2. *Capitalization, etc.*

The Company shall be a New York corporation of perpetual duration, and shall have an authorized capital stock of two classes, with equivalent voting rights per share, viz.:

(a) Three hundred thousand (300,000) shares of common stock, without par value; and

(b) Preferred stock, divided into shares of the par value of one hundred (\$100) dollars each, at least sufficient in aggregate amount to fulfill the requirements of this agreement; carrying preferential cumulative dividends at the rate of seven (7%) per cent per annum, together with the right of preferential payment at par, upon dissolution, but carrying no further right, or interest in, or to, the Company's earnings, or assets.

3. *Joining this Agreement.*

The Company, when organized, shall join in this agreement, in such manner and form as the Organization Committee shall approve, to the end that the Company shall be bound to perform and observe all things hereby contemplated to be by it performed, or observed, as if originally a party hereto.

III. TRANSFER OF PROPERTIES.

1. *In General.*

If and when (a) this agreement shall be authorized, as hereinbefore provided in Clause I, and (b) the Company shall be organized and shall join this agreement, as hereinbefore provided in Clause II, the Organization Committee shall notify each Vendor in writing to that effect, specifying a date (not less than ten days after such notice), and a place for the transfer of properties to the Company as hereinafter provided in this Clause III. In the event of such notice, each Vendor agrees to sell, convey, assign, transfer and deliver (or cause to be sold, conveyed, assigned, transferred and delivered) to the Company absolutely, simultaneously with all the other Vendors (or substantially so) on the date and at the place so fixed, or, at the discretion of the Committee, on any postponed date, or at a different place similarly fixed, but in any event as of the opening of business on January 2, 1923, all of its business and properties hereinafter described, free and clear of all liens and encumbrances, on and after said date (except current liabilities, which the Company shall assume, as hereinafter provided in this Clause III), for the consideration hereinafter provided.

2. *Properties.*

The business and properties to be so transferred by the respective Vendors are, as follows:

Doe, Roe and Koe, each: All of its businesses and properties;

Smith and Brown, each: Its entire business, industrial and/or experimental, in Intermediates (hereinafter defined in this Clause III), developed and/or in course of development, and all of its properties appertaining thereto, including all of its processes, experimental results and information in connection with the manufacture of Intermediates, whether developed, or in course of development, and all of its properties appertaining to such develop-

ment work; subject, however, to such exceptions as the Organization Committee may determine.

Solvay: Its entire business, industrial and/or experimental, in Intermediates (hereinafter defined in this Clause III), developed and/or in course of development, including all of its processes, experimental results and information in connection with the manufacture of Intermediates, whether developed or in course of development; subject, however, to such exceptions as the Organization Committee may determine.

3. *Definitions.*

"Intermediates," as used herein, shall mean all coal tar intermediates, dyes and similar products, excepting explosives, phenol and salicylic acid.

Any business, or property, of any corporation, substantially all of whose outstanding capital stock is now, or shall be, within thirty days after the date hereof, owned by Doe or Roe (hereinafter sometimes called "subsidiary"), is, and shall be, the business, or property, of such Vendor, within the meaning of the provisions of this agreement.

4. *Current Business.*

All operations, transactions and developments, on and after January 2, 1923, in all businesses to be transferred as aforesaid—including all supplies of new capital by Smith, Brown and Solvay to their said respective businesses in Intermediates—shall be for the account of the Company, so that all assets, profits and benefits resulting therefrom shall be included in such transfer and shall belong to the Company.

5. *Assumption.*

All current liabilities and contract obligations incurred in all businesses to be transferred as aforesaid, and not liquidated before such transfer, shall be assumed by the Company; and, for all purposes of this agreement, there shall be deemed to have been incurred in Smith's, Brown's and Solvay's said respective businesses in Intermediates, demand liabilities bearing interest at the rate of six (6%) per cent per annum and corresponding, respectively, in dates and amounts, with any and all supplies of new capital made by them, respectively, on and after January 2, 1923, to their re-

spective businesses in Intermediates; and the Company shall assume liabilities to them accordingly, as part of its general assumption aforesaid.

6. *Instruments.*

All instruments of sale, conveyance, assignment and transfer shall be in such form and executed in such manner as the Appraisal Committee shall approve; and each Vendor shall deliver to the Company, at, or before, the time of said transfers, certificates of title satisfactory to said Committee of all of such Vendors' realty to be transferred as aforesaid. In the discretion of said Committee, assignment of substantially all of the outstanding shares of capital stock of any corporation, by the owner thereof, may be accepted in lieu of transfer by such corporation of its business and properties.

IV. PRICE.

1. *In General.*

In full consideration for each Vendor's business and properties above described and to be transferred to the Company as aforesaid, the Company shall pay to such Vendor (or to its stockholders *pro rata*) the value of such business and properties, at the opening of business on January 2, 1923, which shall be determined as hereinafter provided, and which shall be payable, as follows, viz.:

(a) The value of each Vendor's Tangibles (hereinafter defined in this Clause IV) shall be paid, as follows:

(I) Such value, to the amount of the current liabilities, at the opening of business on January 2, 1923, in such Vendor's business, so to be transferred as aforesaid, and, in the case of Doe and Roe, to the further amount of any and all liabilities (not including stock) incurred by such Vendor, on and after said date (whether or not paid), for the acquisition of shares of any subsidiary (each such last mentioned amount to be adjusted to January 2, 1923, on the basis of interest at the rate of six per cent per annum) shall be paid and fully satisfied by the Company's assumption of the current liabilities of such Vendor's said business, as hereinbefore provided in Clause III.

(II). The remainder of the value of each Vendor's Tangibles

shall be paid by the issue of the Company's preferred stock at par, as hereinafter provided in Clause VI.

(b) The value of each Vendor's Intangibles (hereinafter defined in this Clause IV) shall be paid, partly in cash (or preferred stock at par) and partly by issue of the Company's common stock, as hereinafter provided in Clause VII.

2. Tangibles and Intangibles.

(a) "Tangibles," as used herein, shall mean all lands, buildings, laboratories, plant, machinery, tracks, cars, fixtures, furniture, equipment, implements, apparatus, materials, supplies, goods in process or finished, accounts and bills receivable, securities and cash.

(b) "Intangibles," as used herein, shall mean all properties other than Tangibles, and shall include all good-will, business, contracts, patents, processes, experimental results, information, trade-marks, and trade-names.

V. SCHEDULES.

1. Preparation and Contents.

As soon as practicable after the date hereof, each Vendor shall prepare, subscribe and deliver to the Appraisal Committee, a Schedule, setting forth its business and properties as of the opening of business on January 2, 1923, above described, and so to be transferred as aforesaid, setting forth separately all such business and properties of each subsidiary, stating the values of all tangibles, and segregating such descriptions and valuations, in so far as practicable, as follows: (a) Each separate parcel of land; (b) each separate building, or group of buildings, together with all plant, machinery, tracks, cars, fixtures, furniture, equipment, implements and apparatus contained therein, or connected therewith; (c) all materials and supplies; (d) all goods in process, or finished; (e) all accounts receivable; (f) all bills receivable; (g) all securities; (h) all cash; (i) all patents, issued, or applied for; (j) all trade-names and trade-marks; (k) all developed processes and formulæ, designated by reference to the products thereof; (l) all processes and formulæ in the course of development, similarly so designated; (m) all leases and contracts, whose terms expire after March 31, 1923, identified by dates and parties. Each Sched-

ule shall further set forth, as of the opening of business on January 2, 1923, (n) all accounts and bills payable, and (o) all other indebtedness of the businesses therein referred to; (p) all liens and encumbrances upon the properties therein mentioned; (q) all charges made since January 1, 1921, for depreciation of all such properties; and (r) in the case of Doe and Roe, all liabilities incurred by such Vendors on, or after, January 2, 1923 (whether or not paid), for the acquisition of shares of any subsidiary.

2. Guaranty.

Each Vendor guaranties the correctness of the Schedule so to be subscribed and delivered by it; but all liability under such guaranty shall cease upon final determination of the matters set forth in such Schedule, as hereinafter provided in Clause X.

3. Further Information.

Promptly upon request, each Vendor shall, from time to time, furnish to the Appraisal Committee in writing, certified by such Vendor, such further information of, or under the control of, such Vendor, as said Committee shall deem necessary, or useful, to it in the performance of its duties.

VI. TANGIBLES.

1. Value.

The values of the Tangibles of the respective Vendors, at the opening of business on January 2, 1923, so to be transferred as aforesaid, and the amounts of the current liabilities at said time of their respective businesses, so to be transferred as aforesaid, and the amounts of the liabilities thereafter incurred by Doe and Roe for the acquisition of shares of subsidiaries, shall be determined in the manner hereinafter provided in Clause X, as soon as practicable after the execution hereof, and either before, or after, said transfers.

2. Payment.

(a) The Company's assumption of current liabilities, as aforesaid, shall be made at the time of said transfers, or as soon thereafter as practicable.

(b) One-half of the value of each Vendor's Tangibles, as ap-

pearing from its Schedule to be furnished as aforesaid, and after deduction of the current and other liabilities hereinbefore mentioned in subdivision (a) of sub-clause 1 of Clause IV, as stated in such Schedule, shall be paid by issue of the Company's preferred stock at par, at the time of said transfers, or as soon thereafter as practicable.

(c) The values of the Tangibles, as finally determined, less all amounts previously paid on account thereof, whether by assumption, or in stock, as aforesaid, or otherwise, shall be paid by issue of the Company's preferred stock at par, as soon as practicable after such values shall have been finally determined, as herein provided.

(d) In the discretion of the Organization Committee, the Company may deduct and withhold from any such payment to any Vendor (or its stockholders), as security for indemnity from loss on account of any lien, or encumbrance, on any property of such Vendor transferred as aforesaid, preferred stock to an amount, at par, twenty-five (25%) per cent in excess of the amount of such lien, or encumbrance.

(e) Upon all issues of the Company's preferred stock, pursuant to this Clause VI, there shall be such adjustment with respect to dividends as the Organization Committee shall determine, so that all shares, on whatever date issued, shall, in effect, carry dividends from January 2, 1923.

VII. INTANGIBLES.

1. *Value.*

The relative values of the Intangibles of the respective Vendors, at the opening of business on January 2, 1923, so to be transferred as aforesaid, have already been determined and are hereby finally agreed upon, as follows: (i) partly in terms of shares of the Company's common stock, and (ii) partly in terms of percentages of the amount (if any) by which the Company's net profits during the calendar year 1923 (to be determined as hereinafter provided, including profits accrued prior to, and to be embraced in, said transfers of businesses and properties, as aforesaid), shall exceed the sum of three million (\$3,000,000) dollars (such excess being hereinafter sometimes called "excess net profits"), viz.:

(a) Such value of Doe's said Intangibles is: 18,000 shares of

the Company's common stock, and in addition thereto, 60 per cent of such excess net profits.

(b) Such value of Roe's said Intangibles is: 90,000 shares of the Company's common stock, and in addition thereto, 20 per cent of such excess net profits.

(c) Such value of Koe's said Intangibles is: 62,000 shares of the Company's common stock, and, in addition thereto, 7 per cent of such excess net profits.

(d) Such value of Smith's said Intangibles is: 21,000 shares of the Company's common stock and, in addition thereto, 3.419 per cent of such excess net profits.

(e) Such value of Brown's said Intangibles is: 500 shares of the Company's common stock and, in addition thereto, 1 per cent of such excess net profits.

(f) Such value of Solvay's said Intangibles is nothing.

2. Common Stock Payment.

The value of Intangibles, exclusive of said percentages of excess net profits, shall be paid by issue of shares of the Company's common stock as above specified, at such valuation per share as the Organization Committee shall determine, one-half thereof at the time of said transfers, or as soon thereafter as practicable, and the remainder thereof ninety days after the time of said transfers.

3. 1923 Excess Net Profits.

(a) *Determination:* For the purpose of this agreement, the Company's said net profits, during 1923, shall be the balance obtained by deducting from gross profits (including those of subsidiaries) all expenses and charges of every character relating thereto, including a depreciation charge at the rate of ten per cent per annum on the value of all buildings, laboratories, plant, machinery, tracks, cars, fixtures, furniture, equipment, implements and apparatus, as such gross profits, expenses and charges shall be determined in the manner hereinafter provided in Clause X; provided, however, that only 74.074% of federal income taxes on 1923 income shall be so deducted; and provided, further, that said excess net profits are hereby limited to a maximum amount of \$5,000,000, and any further income during 1923 shall be ignored for the purpose of determining said respective percentages of excess net profits.

(b) *Payment*: The said respective percentages of excess net profits shall be determined quarterly as of April 1, July 1, October 1, 1923, and January 1, 1924, and shall be paid accordingly, in four quarterly installments on July 1, and October 1, 1923, and January 1 and April 1, 1924, respectively, or as soon thereafter as practicable. If not paid on said respective dates, said respective amounts shall bear interest from said respective dates, at the rate of six per cent per annum, until paid. All such quarterly settlements shall be based on the total amount of net profits accrued from and after January 2, 1923, in excess of that proportion (or the whole) of \$3,000,000, corresponding to the period so under settlement; previous payments being credited against the amounts so settled. All payments of said amounts of excess net profits shall be made in cash, except (i) that the Company may, at its option, pay any part thereof, not exceeding thirty per cent in its preferred stock at par (with adjustment of dividends to the date of payment), provided that all payments for each respective quarter (other than payments on account of Roe's said percentage) shall be made in substantially the same proportions of cash and stock, and except (ii) that the Company shall pay Roe's said percentage up to \$500,000 in the Company's preferred stock as aforesaid.

VIII. SPECIAL SUBSCRIPTIONS.

1. *Preferred Stock.*

Until the expiration of 10 days after the date finally fixed for transfers of properties, hereunder, as hereinbefore provided, Smith, Brown and Solvay shall each have the right, at its option, to subscribe in cash, at the price of par and accrued dividends, for all, or any part, of such number of shares of the Company's preferred stock as shall equal 6% of the total number of such shares to be issued pursuant to this agreement, either as hereinbefore provided in Clause VI, or as provided in this Clause VIII; such option to be exercised by delivery to the Company of notice in writing to that effect, duly signed by the subscriber, specifying, or defining, the number of shares so subscribed for. The preferred stock so subscribed for shall be issued as soon thereafter as practicable, in exchange for payment to the Company of the said subscription price therefor in cash.

2. Common Stock.

(a) In the event of subscription as aforesaid by Smith, Brown and Solvay, respectively, for the full amount of the Company's preferred stock for which each has the right to subscribe as aforesaid, and without further consideration, each shall thereupon be entitled to receive 23,546 shares of the Company's common stock from all of the Vendors other than Koe and Solvay (but including Smith and Brown, not only with reference to the stock to be so received by each other and by Solvay, but, also, with reference to the stock to be so received by themselves, respectively), *pro rata* according to the number of shares of the Company's common stock to be issued to them respectively, as hereinbefore provided in Clause VII.

(b) In case either Smith, Brown, or Solvay shall not, as aforesaid, subscribe for any of the Company's preferred stock, such Vendor not subscribing shall not be entitled to receive any common stock pursuant to this Clause VIII, and such Vendor's one-third interest (as stockholder) in the 62,000 shares of the Company's common stock to be issued for Koe's Intangibles, as aforesaid, shall contribute *pro rata* to the Company's common shares to be received by each subscriber, pursuant to this Clause VIII.

(c) In case either Smith, Brown, or Solvay, shall subscribe, as aforesaid, for less than the full amount of the Company's preferred stock for which such Vendor has the right to subscribe, as aforesaid, such Vendor subscribing for such less amount shall be entitled to receive, pursuant to this Clause VIII, proportionately less than 23,546 of the Company's common shares, and such Vendor's one-third interest (as stockholders) in the 62,000 shares of the Company's common stock to be issued for Koe's Intangibles as aforesaid, shall, except to the extent of the same proportion, contribute *pro rata* to the Company's common shares to be received by each subscriber (including such Vendor), pursuant to this Clause VIII.

(d) As soon as practicable after the expiration of the time within which subscriptions to the Company's preferred stock may be made, as provided in this Clause VIII, each of the Vendors shall, without charge, assign and transfer to the others, or to one, or more, of them, conformably with the provisions of this Clause VIII, shares of the Company's common stock theretofore

issued, or thereafter to be issued, to such Vendor, as hereinbefore provided in Clause VII.

IX. ORGANIZATION COMMITTEE.

1. *Membership.*

The Organization Committee, above referred to, is, and shall be, composed of ten members, as follows: Messrs. John Doe and Henry Doe (selected by Doe); Messrs. Richard Roe and Henry Roe (selected by Roe); Messrs. John Smith and Harvey Smith (selected by Smith); Messrs. John Brown and Charles Brown (selected by Brown); Messrs. Henry Solvay and Richard Solvay (selected by Solvay).

2. *Action.*

Except as herein otherwise expressly provided, one, or both, of the two members of said Committee selected by each of the last mentioned five Vendors (and the respective successors of such members) shall have one, and only one, vote and voice, to be expressed by both jointly, or by either alone, in all actions to be taken and upon all questions to be determined by said Committee, and any joint action, or determination, within the powers of said Committee, taken, or made, by any four, or more, members thereof, selected respectively by at least four of said five Vendors (or the respective successors of such members) shall be the action, or determination, of said Committee. All actions and determinations of said Committee, if within its power, shall be final and conclusive upon all other parties hereto and upon the Company.

3. *Powers and Duties.*

In addition to the powers and duties herein elsewhere conferred, or imposed, upon said Committee, and except as herein otherwise expressly provided, it shall have the power and duty generally to do all things by it deemed necessary, or appropriate, to the end that this agreement may be carried into full effect as promptly as practicable; including power to construe this agreement, or any part hereof, and to reconcile any inconsistency and supply any defect herein, always reasonably and harmoniously with the general purport hereof.

4. *Amendment of this Agreement.*

With the consent of the full membership of said Committee, this agreement may be by it amended, supplemented, or cancelled, in any respect, in whole or in part, at any time, by appropriate writing in six counterparts, endorsed on, or attached to, the six counterparts hereof respectively, and signed by all the members of said Committee.

X. APPRAISAL COMMITTEE.

1. *Membership.*

The Appraisal Committee, above referred to, is, and shall be, composed of five members, as follows: Mr. John Doe (selected by Doe); Mr. Richard Roe (selected by Roe); Mr. Harvey Smith (selected by Smith); Mr. John Brown (selected by Brown); and Mr. Henry Solvay (selected by Solvay).

2. *Action.*

Except as herein otherwise expressly provided, any joint action, or determination, of four members of said Committee, within its powers, shall be the action, or determination, of said Committee, and all actions and determinations of said Committee, within its powers, shall be final and conclusive upon all other parties hereto and upon the Company.

3. *Appraisals.*

Said Committee shall have the power and duty to verify, harmonize and correct the said Schedules to be furnished by the respective Vendors as aforesaid; to identify and determine, specifically, the businesses and properties of the respective Vendors, above described and to be transferred as aforesaid, including all business and properties referred to in sub-clause 4 of Clause III, and all current liabilities and contract obligations referred to in sub-clause 5 of Clause III; to ascertain and determine (a) the value of each Vendor's Tangibles at the opening of business on January 2, 1923, to be transferred as aforesaid; (b) the amount of the current liabilities at the opening of business on January 2, 1923, of each Vendor's business, to be transferred as aforesaid; (c) the amounts and character of any and all liens, or encumbrances, existing on or after January 2, 1923, upon, or against, any part of the properties

of the respective Vendors, to be transferred as aforesaid; (d) the amounts, dates and maturities of all liabilities incurred by Doe and Roe, on and after January 2, 1923, for the acquisition of shares of any subsidiary; (e) the quarterly and aggregate amounts of the Company's said excess net profits during 1923, as well as the respective Vendor's percentages thereof, hereinbefore referred to in Clause VII; and to determine, generally, as bases for any, or all, such specific determination, all such uniform principles, rules, and methods as it shall deem proper. Said Committee's determinations, whether general or specific, of the matters above mentioned, in this sub-clause 3, shall require the unanimous consent of the full membership of said Committee and shall be effective hereunder, only if, and when, reduced to writing signed by all five members and delivered to the Organization Committee, or the Company. All such determinations, so made, shall be final and conclusive upon all other parties hereto and upon the Company. If, and whenever, there shall be any disagreement among the members of said Committee, regarding the determination of any matter requiring their unanimous consent, the determination of such disagreement shall be referred by them to some duly qualified and impartial umpire, selected by them, and such umpire's determination of such disagreement, when reduced to writing, signed by him and delivered to the Organization Committee, or the Company, shall be final and conclusive upon all parties hereto and upon the Company. If, and whenever, in the opinion of the Organization Committee, the Appraisal Committee shall unreasonably refuse, or neglect, so to refer any such disagreement, the Organization Committee, instead of the Appraisal Committee, shall refer such disagreement and select such umpire.

4. Incidental Powers and Duties.

Incidentally to the powers and duties aforesaid, the Appraisal Committee shall have the power and duty, either personally or by its agents, to make all such inspections and examinations of properties and records of, or under the control of, the respective Vendors, or the Company, all title searches and all such other investigations, and to do all such other things, as it shall deem necessary, or advisable, for the full and proper performance of its duties.

XI. COMMITTEES GENERALLY.

1. *Vacancies.*

Any member of either Committee may resign, at any time, from such Committee, by written notice to such Committee. If, and whenever, a vacancy shall occur in either Committee, whether on account of resignation, death, incapacity, refusal, or neglect, to act, or otherwise, such vacancy shall promptly be filled by selection of the Vendor, which selected the previous incumbent of the vacant position, by written notice to such Committee, accompanied by such successor's written assumption of the duties of such position as herein stated. In default of such action, within ten days after written notice of such vacancy by such Committee to such Vendor, such Committee shall fill such vacancy by its selection, subject to assumption as aforesaid by the successor so selected.

2. *Method of Procedure.*

Each Committee may act with, or without, meeting, or notice of meeting, and may otherwise govern its method of procedure as it may desire. Each Committee may choose and employ such officers, agents, counsel, accountants, engineers, clerks and other assistants, with such duties and such of its powers as it may determine. Each Committee will undertake the performance of its duties promptly after the execution of this agreement, and will thenceforth proceed to perform the same as expeditiously as practicable, without delaying for the authorization of this agreement, or on any other account not practically requiring delay.

3. *Notices.*

Except as herein otherwise expressly provided, any notice, or request, required by this agreement to be given by either Committee, shall be sufficiently given if (a) expressed in writing, (b) signed by a controlling part of the membership of such Committee, or by any duly accredited representative of such Committee, and (c) mailed (postage prepaid) addressed to the person, or corporation, to whom such notice, or request, is required to be given, at any usual address of such person, or corporation.

4. *Expenses.*

Each Committee may incur and discharge any and all expenses by it deemed reasonable for the proper performance of its duties. The expenses of each Committee shall be paid by the Company.

5. *Responsibility of Members.*

Each Committee will faithfully endeavor to perform its duties hereunder justly, wisely and expeditiously; but no member of either Committee shall be personally liable hereunder, except for his own gross, or wilful, neglect, or misconduct.

XII. SUCCESSORS AND ASSIGNS.

This agreement shall bind and benefit the successors and assigns of the parties hereto, respectively.

IN WITNESS WHEREOF, each of the Vendors has caused this agreement to be subscribed in its corporate name and sealed with its corporate seal by its authorized officers, and the members of the Organization Committee and the members of the Appraisal Committee have hereunto subscribed their names, all in six counterparts, as of January 5, 1923.

Doe Aniline & Chemical Works, Inc.,

By John Doe,

President.

(Seal)

Attest:

Henry Doe,
Secretary.

Richard Roe Aniline & Chemical Works, Inc.,

By Richard Roe,

President.

(Seal)

Attest:

Henry Roe,
Secretary.

Koe Products Co., Inc.,

By Henry Koe,

President.

(Seal)

Attest:

John Jones,
Secretary.

Smith Chemical Co., Inc.,
By John Smith,
President.

(Seal)

Attest:

Harvey Smith,
Secretary.

Doe Solvay Co.,
By Henry Solvay,
President.

(Seal)

Attest:

Richard White,
Secretary.

The Brown Company,
By John Brown,
President.

(Seal)

Attest:

Charles Brown,
Secretary.

John Doe (L.S.),
Henry Doe (L.S.),
Richard Roe (L.S.),
Henry Roe (L.S.),
John Smith (L.S.),
Harvey Smith (L.S.),
John Brown (L.S.),
Charles Brown (L.S.),
Henry Solvay (L.S.),
Richard Solvay (L.S.),
Organization Committee.

John Doe (L.S.),
Richard Roe (L.S.),
Harvey Smith (L.S.),
John Brown (L.S.),
Henry Solvay (L.S.),
Appraisal Committee.

No. 202.

Agreement whereunder partners and corporations agree to form new corporation and partners agree to sell their business, trade-marks, trade-names, processes, etc., to new corporation, with covenants to enter employ of new corporation, instruct its agents in the use of formulæ and not otherwise to engage in the same business for twenty years.⁵

AGREEMENT, made January 5, 1923, by John Doe and Henry Doe, of Plattsburg, New York, engaged in business as partners, under the name and style of "Doe & Co." (herein called the "Partners"), and the Roe Tobacco Co., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "New York Corporation"), and the Koe Tobacco Co., a corporation, duly organized under the laws of the State of New Jersey, and having its principal office at No. 37½ North Eleventh Street, Newark, New Jersey (herein called the "New Jersey Corporation"),

WHEREIN IT IS AGREED, AS FOLLOWS:

1. That the Partners, as an inducement to the New York Corporation and the New Jersey Corporation to enter into this contract, represent and warrant to them:

(a) That, as partners in the business of manufacturing and selling cigars; under various brands, they have, for the past two years, done business, as follows:

In the year 1921.

Amount received for cigars sold,		\$1,732,000
Gross and manufacturing expenses,	\$419,000	
Selling expenses, excluding advertising,	164,000	
Advertising expense,	57,000	
		<hr/>
		640,000
		<hr/>
Net profit,		\$1,092,000

⁵ Adapted from *American Tobacco Co. v. U. S.* (1910), 221 U. S. 106, 31 Sup. Ct. Rep. 632, 55 Law ed. 663.

In the year 1922.

Amount received for cigars sold,		\$1,850,000
Gross and manufacturing expenses,	\$562,000	
Selling expenses, excluding advertising,	201,000	
Advertising expenses,	55,000	
	<hr/>	818,000
Net profit,		<hr/> \$1,032,000

(b) That the Partners have used, without interference or adverse claim, the trade-marks, used by them, and that they will be able to make the conveyance, or conveyances, hereinafter set out and hereinafter contemplated; and that said conveyances, when so made, will convey to the purchaser all of their property and good-will needful and useful in the carrying on of the said business, free from any debts, or liabilities, and with full power and right in the purchaser to make use of the brands and trade-marks conveyed, as well as the tangible property and the trade-name, "Doe & Co."

2. That expert accountants and agents selected by the New York Corporation and the New Jersey Corporation, may examine the books, papers, property and business of the Partners, in order to verify the representations above made, and that the Partners will afford such expert accountants and agents full and unrestricted opportunity to make such examination.

3. That, if upon the completion of such examination, such expert accountants and agents of the New York Corporation and the New Jersey Corporation shall agree and report that the representations of the Partners above made are substantially true, then, and in that case, a corporation shall be formed under the laws of the State of New Jersey, with an authorized capital stock of ten million (\$10,000,000) dollars, with power to engage in the business of manufacturing and selling cigars, cheroots and little cigars, and with such other powers as the New York Corporation and the New Jersey Corporation shall desire, or be advised are desirable.

4. That said new corporation shall be organized, and the examinations, which are herein provided for, shall be made, as expeditiously as possible, so that on, or as soon as practicable after, January 26, 1923, the Partners shall convey to said new corporation their entire cigar business, including the name, good-will, trade-marks, trade-names, symbols, patents and copyrights thereof,

and rights analogous thereto, recipes of manufacture, and including, also, stock on hand, whether manufactured, in process of manufacture, or fully manufactured, labels, wrapping material, advertising matter, and supplies, machines, and appliances suitable and useful in the manufacture of cigars, and such as have been used by the Partners in their manufacture of cigars, real estate in Plattsburg, New York, suitable for the business of said new corporation, and all other property, whether herein specifically mentioned or not, owned by the Partners, which shall be useful and available in the business of cigar manufacturing (except cash on hand, bills receivable, accounts receivable and contracts not hereinafter scheduled belonging to the Partners; and all of such cash, bills and accounts receivable, and contracts not hereinafter scheduled are hereby expressly excluded from the aforesaid contemplated conveyance); it being agreed that the said conveyance shall include the exclusive right to the use of the firm name of the partnership, "Doe & Co.," as well as the name, or names, of such of the Partners, which the Partners have, or the co-partnership has, a right to use on labels, or advertisements.

5. That said conveyance or conveyances shall be made as of the date of January 26, 1923; and said conveyance shall contain warranties by the Partners, jointly and severally, that the business and property conveyed is free from any lien, debt, liability, encumbrance or assessment of any kind, legal or equitable, including all taxes of whatever sort for the year 1922, and that the trade-marks conveyed are valid trade-marks, which the Partners have the right to convey; and that they will, jointly and severally, warrant and defend the title made to said new corporation against all claims, whatsoever and all persons whomsoever.

6. That at the time of said conveyance, and in the same instrument, the Partners shall, and will, covenant and agree, each for himself, that he will not, for a term of twenty (20) years from the date of said conveyance, directly or indirectly, engage in the manufacture of tobacco into cigars, or into any other of its forms, or in distributing the same, or own stock in any corporation (other than said new corporation, the New York Corporation, and the New Jersey Corporation) so engaged in such manufacture, or distribution, within the several states, colonies, or dependencies of the United States (except the state of Utah and the territory of Alaska), or the several countries, or nations, of Europe, except for,

or with the written consent of, the said new corporation, authorized by a majority vote of all of its directors; and that they will not, during said term of twenty (20) years, permit the use of their names, or the name of either of them, whether in connection with each other or separately, or with, or without, other names, or initials.

7. That, at the time of said conveyance, and in the same instrument, the Partners shall, each for himself, agree to enter into, and devote his whole time and best efforts to, the service of said new corporation, and, if the new corporation desires so long to retain him, to remain in its service for five (5) years, at the following salaries, respectively, all payable in equal monthly installments, to wit: John Doe, ten thousand (\$10,000) dollars per year; and Henry Doe, ten thousand (\$10,000) dollars per year. But said contract of employment shall not, however, require the new corporation to retain the services of either of the Partners beyond a year after the said conveyance; and, after such first year term, the new corporation may, at any time, dispense with the services of either of said Partners, without thereby incurring any liability to him in respect of any part of the unexpired term of five years.

8. That, at the time of said conveyance, and in the same instrument, the Partners shall further, each for himself, agree to instruct, at any time thereafter, the designated agents of the said new corporation as to any of the formulæ, processes or recipes for the treatment, or cure, of tobacco and the manufacture of cigars used by, or known to, him, and further instruct such designated agents in the use of such formulæ, processes or recipes, and that he will not make use of, or make known to any person or persons other than such designated agents, any of such formulæ, processes or recipes.

9. That, in consideration of the conveyance, covenants and agreements by the Partners as aforesaid, the said new corporation shall pay to the Partners:

(a) The sum of one million (\$1,000,000) dollars in cash, which amount shall be in full payment for the trade-names, good-will, trade-marks, symbols, recipes, copyrights, patents and rights analogous thereto, and all other intangible assets of whatever kind, belonging to the said Partners, and in any way useful, or available, in the cigar business, except book accounts, bills receivable and contracts not scheduled as herein provided; and

(b) A further sum for the tangible assets useful and available in

the cigar business, which shall be ascertained and determined as follows:

(aa) The real estate, buildings, unmanufactured stock, stock in process of manufacture, and that fully manufactured, shall be paid for, at the cost thereof to the Partners, as shown by the books of the Partners, if the same shall have been accurately kept. In arriving at the cost of any of such property, no amount shall be allowed for interest on the investment made by the Partners. But, in the case of stock of tobacco, the actual cost of carriage, storage and insurance shall be considered and allowed.

(bb) Machinery and fixtures, such as are useful and available in the cigar business, shall be paid for, at its actual cost and agreed value; but, in no case, at a price exceeding the cost.

(cc) Wrapping materials, labels and supplies, other than leaf and manufactured stock, shall be paid for, as provided in subdivision "(aa)" of this article, provided, however, that none shall be taken or paid for by the said new corporation, except such as will be useful and available to it in its business.

(dd) Such leasehold as the said Partners have, useful to said new corporation in its business, shall be turned over to said new corporation, without premium.

(ee) If the Partners shall have made advances on contracts for the purchase of leaf, and additional amounts shall be due to the vendors thereof, the said new corporation will, upon receipt of such leaf, if said contract is taken by said new corporation, pay for the same, by returning to the Partners the amount advanced by them, without interest, and settling with the vendors for the balance due him.

(ff) No contracts of whatever sort not set out in "Schedule A" hereto attached, shall be taken over by said new corporation, unless the same shall be approved of and agreed to by Harry Koe, who is hereby appointed the agent for that purpose, for both the New York Corporation and the New Jersey Corporation.

10. It is agreed that said new corporation shall be organized under the direction of the legal advisers of the New York Corporation and the New Jersey Corporation, and that no charge shall be made to said new corporation for the legal advice and services in its organization. The expense of such organization, other than legal advice and services, shall, however, be borne by the said new corporation.

11. (a) The stock of said new corporation shall be issued for cash, at par, and it shall be issued and paid for in the proportion of seven (7%) per cent to the Partners, or to their nominees, and forty-six and one-half ($46\frac{1}{2}\%$) per cent to the New York Corporation, or its nominees, and forty-six and one-half ($46\frac{1}{2}\%$) per cent to the New Jersey Corporation, or its nominees; and each of the parties shall meet any call for cash made by the board of directors of said new corporation, as follows:

(1) Seven (7%) per cent of the amount so called shall be paid by the Partners, or their nominees; and

(2) Forty-six and one-half ($46\frac{1}{2}\%$) per cent thereof, by the New York Corporation, or its nominees; and

(3) Forty-six and one-half ($46\frac{1}{2}\%$) per cent thereof, by the New Jersey Corporation, or its nominees.

(b) Stock shall issue to the amount that payments shall be made, and at the time when such payments shall be made, instead of being credited to the subscribers paying the same on their respective stock subscriptions.

(c) In case the board of directors of said new corporation shall decide to purchase any other property, or business, and to pay for the same in stock, and not in cash, the stock necessary and used in such purchase shall be deducted equally from the amount that under this agreement would be coming to the New York Corporation and the New Jersey Corporation and the payments required by them shall be likewise abated.

12. That said new Corporation shall be organized with a paid-up capital stock of ten thousand (\$10,000) dollars, of which the nominees of the New York Corporation and the nominees of the New Jersey Corporation shall hold ninety-three hundred (\$9,300) dollars, and the Partners, and their nominees, shall hold seven hundred (\$700) dollars; and these first stockholders shall organize and elect a board of directors, and, thereafter, such board of directors shall control the operation of said new corporation, controlling only by the provisions of this agreement. The said nominees of said New York Corporation and New Jersey Corporation shall select a name for said new corporation and fix the number of its directors.

IN WITNESS WHEREOF, on the day and year first above written, the Partners have caused this instrument to be signed and sealed in their partnership name, by John Doe, one of the active partners,

and they have individually set their hands and seals hereto, and the New York Corporation and the New Jersey Corporation has each hereunto signed its name, by its President, thereunto duly authorized, and affixed its corporate seal, attested by its Secretary.

Doe & Co.,

By John Doe (L.S.).

John Doe (L.S.).

Henry Doe (L.S.).

Roe Tobacco Co.,

By Richard Roe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Koe Tobacco Co.,

By Henry Koe,
President.

(Seal)

Attest:

John Smith,
Secretary.

[Annex Schedule of Contracts Assumed.]

No. 203.

Agreement to operate a department in store of one adventurer, upon profit-sharing basis.⁶

THIS AGREEMENT, made January 5, 1923, by John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party is now engaged in business, under the name and style of John Doe & Co., in the premises, known as No. 11½ Broadway, Borough of Manhattan, New York City; and

⁶ Adapted from *Stoller v. Franken* (1916), 171 App. Div. 371, 157 N. Y. Supp. 333.

WHEREAS, the Second Party is about to engage in business in the said premises, as herein more fully described:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the Second Party shall operate a department for selling dress fabrics in the said premises of the First Party, which shall be known as the "Roe Department of Doe & Co.," and that such department shall be independent of any other business conducted in said premises; and, in the event of the removal of the First Party from said premises, such department shall be conducted at such other place to which the First Party may move.

2. That the First Party shall furnish the cash and credit for all merchandise ordered, or secured, for the purpose of such department, and shall pay the running expenses and salaries of employes of said department, and that the full amount thereof shall be deducted and remitted to him from the gross income of the said department before the division of the profits thereof.

3. That there shall be paid to the First Party a monthly rental of fifty (\$50) dollars, for the space necessary for the conduct of the business of said department, and the reasonable value of the gas and electricity consumed in the operation of the said department.

4. (a) That the Second Party shall manage the business of said department, and shall buy and sell, with the approval of the First Party, all goods and merchandise, both in this country and abroad, which are necessary for the successful maintenance and conduct of the business of said department.

(b) That the Second Party shall faithfully and diligently, and according to the best of his ability, in all respects, purchase the goods, wares and merchandise needed for the said department, and sell the same for the best interests of the department.

(c) That the Second Party shall draw the sum of forty-five (\$45) dollars a week, which shall be debited as an expense of the said department, and that he shall receive, at the end of each year, fifty (50%) per cent of the net profits of the said department.

5. That all moneys, checks, or negotiable instruments, belonging to this department, shall be in the custody and under the supervision of the First Party, and that all books, accounts and papers, belonging to the said department, shall always be open and subject to the inspection of each party hereto.

6. (a) That the First Party shall receive and draw, at the end of each and every year, fifty (50%) per cent of the net profits of

the said department; and, in addition thereto, shall receive and draw the sum of twenty-five (\$25) dollars per week, which shall be debited as an expense of said department.

(b) That the Second Party shall make no purchase, without the written consent of the First Party, and that the Second Party shall not endorse any note, nor sign any checks to be paid by the First Party, nor charged to the department heretofore set forth, nor incur any obligations whatsoever, in connection therewith, without the written consent of the First Party.

7. That this agreement shall continue for a period of two (2) years, from the date hereof.

8. That, in the event of any violation of this agreement by either party hereto, the other party may terminate this agreement, by giving ten (10) days' notice in writing, setting forth in writing that part of the agreement which it shall be claimed has been violated.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of
John Smith.

CHAPTER XII

LANDLORD AND TENANT

Section 1.—Leases.

- No. 204—Lease of apartment in hotel for non-housekeeping purposes, whereunder hotel agrees to furnish house service and linen and laundry service.
- No. 205—Lease of building for long term of years, whereunder landlord is to contribute to expenses of altering the building, and tenant is given option to purchase, within specified time.
- No. 206—Lease of part of building.
- No. 207—Lease of space at fashion exposition.
- No. 208—Lease of space for show-case purposes.
- No. 209—Agreement for subletting of store, with option to renew.

Section 2.—Miscellany.

(A).—Covenants by Landlord.

- No. 210—Covenant by landlord to erect theatre.
- No. 211—Covenant by landlord to give notice by registered mail.
- No. 212—Covenant by landlord of quiet enjoyment.
- No. 213—Covenant by landlord to repair, in case of fire.
- No. 214—Covenant by landlord to supply elevator service.
- No. 215—Covenant by landlord to supply elevator service and steam heat.
- No. 216—Same—another form.
- No. 217—Covenant by landlord that title to lighting fixtures shall remain in tenant.

(B).—Options Reserved by Landlord.

- No. 218—Option permitting landlord to elect to renew lease, or, in default thereof, to purchase building erected by tenant, at a price to be fixed by arbitration.

- No. 219—Option permitting landlord to purchase buildings, which may be erected by tenant, and, in default thereof, permitting tenant to purchase the plot, upon appraised valuation.
- No. 220—Option permitting landlord to terminate lease, in event authorities order alterations to building.
- No. 221—Option permitting landlord to terminate lease, upon breach by tenant.
- No. 222—Option permitting landlord to terminate lease, upon insolvency of tenant.
- No. 223—Option permitting landlord to terminate lease, upon notice and payment of stipulated amount.
- No. 224—Option permitting landlord to terminate lease, upon sale of premises.
- No. 225—Same—another form.
- No. 226—Same—another form.
- No. 227—Same—another form.
- No. 228—Same—another form.

(C).—Covenants by Tenant.

- No. 229—Covenant authorizing landlord to make alterations.
- No. 230—Covenant authorizing landlord to remove encroachments.
- No. 231—Covenant authorizing landlord to repair, at tenant's expense, upon his default.
- No. 232—Covenant by tenant to alter building into garage.
- No. 233—Covenant by tenant that alterations, etc., shall belong to landlord.
- No. 234—Covenant by tenant to comply with orders of governmental departments.
- No. 235—Same—another form.
- No. 236—Covenant by tenant to continue liable, after summary proceedings or abandonment of premises.
- No. 237—Covenant by tenant to deposit security.
- No. 238—Covenant by tenant to discharge mechanic's lien.
- No. 239—Covenant by tenant to execute further instruments.
- No. 240—Covenant by tenant to indemnify landlord against negligence.
- No. 241—Covenant by tenant authorizing landlord to insure plate glass, for tenant's account.

- No. 242—Covenant by tenant to obtain consent to changes in electrical equipment.
- No. 243—Covenant by tenant to pay deficiency upon reletting, with waiver of notice of intention to re-enter.
- No. 244—Same—another form.
- No. 245—Same—another form.
- No. 246—Covenant by tenant to pay increase in price of coal.
- No. 247—Covenant by tenant to pay increase in insurance premiums.
- No. 248—Covenant by tenant to pay real estate taxes and other assessments.
- No. 249—Covenant by tenant to pay increase in real estate taxes.
- No. 250—Covenant by tenant to pay the rent as stipulated.
- No. 251—Covenant by tenant to pay, as rent, expenditures incurred by landlord, because of tenant's failure to perform.
- No. 252—Covenant by tenant to pay for repairs, as part of rent.
- No. 253—Covenant by tenant to pay water charges.
- No. 254—Same—another form.
- No. 255—Same—another form.
- No. 256—Covenant by tenant to permit landlord to enter for inspection or repairs.
- No. 257—Covenant by tenant to remove snow and ice.
- No. 258—Covenant by tenant to replace damaged plate glass.
- No. 259—Covenant by tenant to vacate upon sale and notice.
- No. 260—Covenant by tenant to vacate such portions of a farm as lessor may sell.
- No. 261—Covenant by tenant to waive negligence of landlord.
- No. 262—Covenant by tenant waiving right to redeem premises.
- No. 263—Covenant by tenant not to claim award in condemnation proceedings.
- No. 264—Covenant by tenant not to place signs, without landlord's consent.
- No. 265—Covenant by tenant not to post advertisements, notices or signs.

(D).—Options Granted to Tenant.

- No. 266—Option permitting tenant to purchase premises at appraised value, to be determined by appraiser's selected by the parties.

No. 267—Option permitting tenant to purchase premises.

No. 268—Same—another form.

No. 269—Same—another form.

No. 270—Option permitting tenant to renew lease.

(E).—Mutual Covenants.

No. 271—Mutual covenant creating a lien for amount deposited.

No. 272—Mutual covenant limiting effect of particular waiver.

No. 273—Same—another form.

No. 274—Same—another form.

No. 275—Same—another form.

No. 276—Same—another form.

No. 277—Mutual covenant providing for automatic renewal, in absence of written notice to contrary.

SECTION 1.—LEASES.

No. 204.

Lease of apartment in hotel for non-housekeeping purposes, whereunder hotel agrees to furnish house service and linen and laundry service.¹

AGREEMENT, made January 5, 1923, between John Doe Hotel, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Lessor"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Lessee"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

FIRST: That the Lessor hereby lets unto the Lessee, and the Lessee hereby hires from the Lessor, all those certain rooms from No. 137 to No. 138, inclusive, on the fifth floor of the building known as John Doe Hotel, situate at No. 11½ Broadway, Borough of Manhattan, New York City, for a term of one (1) year from the 1st day of February, 1923, to the 31st day of January, 1924, to be occupied as a private dwelling apartment by the Lessee and his family only, consisting of three (3) persons, and not otherwise, for the annual rent or sum of three thousand (\$3,000) dollars, payable

¹ Cf. *Ash v. Meeks* (1909), 134 App. Div. 154, 118 N. Y. Supp. 440; *Shearman v. Iquois Hotel Co.* (1903), 42 Misc. 217, 85 N. Y. Supp. 365.

in equal monthly payments of two hundred and fifty (\$250) dollars each, in advance, on the first day of each month during said term.

SECOND: The above letting is upon the following conditions, and subject to the reservations hereinafter set forth, to all and each of which the Lessee assents and covenants and agrees with the Lessor to keep and perform:

1. That no cooking apparatus, or preparation of food, shall be permitted on the premises leased to the Lessee.

2. That the entire agreement between the Lessor and the Lessee is incorporated in this lease, and no verbal understanding, or agreements, shall be recognized by either party.

3. That the Lessee shall pay the rent as the same falls due, as above agreed.

4. That the Lessee shall not assign this lease, nor underlet the premises hereby demised, nor any part thereof, save with the written consent of the Lessor indorsed hereon.

5. That the Lessee shall take good care of the apartment and its fixtures and suffer no waste, or injury, and shall not drive picture or other nails into the walls or woodwork, of said premises, nor allow the same to be done; and shall, at his own cost and expense, make and do all repairs required to walls, ceilings, paper, plumbing works, pipes and fixtures belonging thereto, whenever damage and injury shall have resulted from misuse, or neglect; and, at the end, or other expiration, of the term shall deliver up the demised premises in good order and condition.

6. That the Lessee shall not make any alterations, additions, or improvements, in said premises, without the written consent of the Lessor, and that all work shall be done in a satisfactory and workmanlike manner, subject to the approval of the Lessor.

7. That the Lessor shall not be liable for any damage to any property at any time in said premises, or building, by leakage of Croton, or other, water, steam, or gas, from, or into, any part of said building in which the demised premises are situated, or from any other cause, in any event.

8. (a) That the Lessee shall permit the demised premises to be shown to applicants during three months, next before the expiration of this lease, and if the said Lessee shall not be personally present during said period, or any part thereof, to open and permit an entry into said premises, or if, at any other time, an entry shall

be deemed necessary for the inspection, or protection of the property, the officers, or agents, of the Lessor may enter the same by means of a master key, or otherwise, without being liable to any prosecution, claim, or cause of action, for damages, by reason thereof, and without, in any manner, affecting the obligations of this lease.

(b) It is, however, expressly understood and agreed that the right and authority hereby reserved does not impose, nor does the Lessor assume by reason thereof, any responsibility, or liability, whatsoever for the care, maintenance, or supervision of the demised premises, or of any of the pipes, fixtures, appliances, or appurtenances, therein contained, or therewith, in any manner connected.

9. That the Lessee has read the rules and regulations of the John Doe Hotel hereto subjoined, and made a part hereof, and agrees to abide by, and conform to the same, and to such further reasonable rules and regulations as the Lessor may, from time to time, make, or adopt, for the care, protection and government of the building and the general comfort and welfare of its occupants.

10. (a) That the Lessor shall furnish to the Lessee, without additional charge, hot and cold water, elevator and hall service, and steam heat in said premises from October 1st to May 15th in each year, to an extent sufficient, in the opinion of the Lessor, for the proper enjoyment of the said demised premises.

(b) That the Lessor shall, also, supply electric current for lighting the lamps provided by the Lessor on the fixtures now installed in the said premises, from sunset to sunrise, and no other lights, lamps, fixtures, or appliances, shall be attached to, or connected with, any electric fixture by the Lessee, except upon the written consent of the Lessor, and the Lessor hereby expressly reserves the right, at any time, during the term hereof, to install in said premises an electric meter to measure the current consumed in said premises, by the Lessee, and to enter said demised premises, for the purpose of installing said meter and subsequently for the purpose of reading the same. And it is hereby expressly agreed that, if the amount of electricity, so ascertained to be consumed in said premises, at the rate charged therefor for similar service by the New York Edison Company, amounts to more than six per centum of the rent paid for said demised premises, during the period of such consumption, the Lessee shall, and hereby covenants

to, pay, in addition to the stipulated rent for such period, the amount of such excess.

(c) It is understood and agreed, however, that the suspension of the operation of the elevators, or the light, or the water, or heating apparatus, or other service, pending inspection, repairs, or improvements, by reason of any strike or of any other cause beyond the control of the Lessor, shall not, in any manner, affect the obligations, or covenants, of the Lessee, nor shall the Lessor be liable to make any compensation therefor, or be liable to any claim, or action, for damages by reason thereof.

11. That the Lessee shall make good, or repair, all damage to the building, or to the property, of the Lessor, or other tenants, contained therein, caused by his acts, or omissions, or by those of his family, or servants, particularly damage caused by neglect, or misuse, of the water appliances, gas fixtures, or steam radiators, or connections, in the demised premises.

12. That the Lessee shall, in case of fire, give immediate notice thereof to the Lessor, who shall, thereupon, cause the damage to be repaired as soon as reasonably and conveniently may be, but if the demised premises shall be so damaged that the Lessor shall decide to rebuild, then, upon a payment of all rent up to the date of such damage, or destruction, the term shall cease; but the Lessee may not, and shall not, quit, or surrender, possession of the said demised premises, nor shall any allowance, or deduction, of rent be made on account of the untenantability of the same from any other cause other than a total destruction by fire, as aforesaid.

13. (a) That, in case of default in any of the covenants, or if the premises shall become vacant, the Lessor may re-enter, without notice, or by means of summary proceedings, or any other method prescribed by law, and resume possession and re-let the premises in its own name, for the account of the Lessee, without terminating this lease, or, in any manner, affecting the obligation of the Lessee to pay, as damages, the amount herein covenanted to be paid, as rent, in which event, however, there shall be credited to the account of the Lessee the amount received from such re-letting, after deducting the expenses of such proceedings as may have been necessary in order to regain possession under this provision, as well as the cost of re-letting the premises, together with a commission of $2\frac{1}{2}\%$ on the amount of rent received, which is hereby fixed as a proper and reasonable charge for re-letting said premises; and the

execution of a new lease for the same premises shall not terminate the Lessee's liability, or obligations, hereunder, which shall, in all events, remain in full force and effect for the full term of this lease; and if he shall have once vacated the demised premises, the Lessee may not re-enter, without the consent of the Lessor, or its agents.

(b) That no act, or thing, done by the Lessor, or its officers, or agents, during the term hereby granted, shall be deemed an acceptance of a surrender of said premises, and no agreement of surrender, or to accept a surrender, of said premises shall be valid, unless the same shall be made in writing, subscribed on behalf of the Lessor by its proper officer duly authorized thereto, and under its corporate seal thereto affixed by express authority.

14. That, in case of the re-entry by the Lessor, in the manner, or by the means provided, or referred to, in the 13th covenant of this lease, the amount of damages, or deficiency, shall become due and payable each month, as soon as the amount of such damage, or deficiency, shall have been ascertained in the manner herein provided, and separate actions may be maintained each month to recover the damage, or deficiency, then due, without waiting until the end of the term, and no notice, or demand, shall be necessary, in order to maintain such action.

15. That, if, at any time, during the term hereof, the Lessor, its officers, or agents, should deem objectionable any conduct on the part of the Lessee, or his family, guests, or servants, the relation of landlord and tenant hereby created may be dissolved, and the tenancy terminated by the giving of a written notice to that effect, and the Lessor may, at any time after the giving of such notice, re-enter the demised premises by means of summary proceedings as against a holdover, or otherwise, as provided, or authorized by law, the Lessee hereby expressly waiving any notice, or demand, for possession, and consenting to the issuance of a precept without notice.

16. (a) That it is understood that the common storerooms, for the storage of bicycles, trunks, and other articles are provided and maintained gratuitously by the Lessor, and their use is not appurtenant to the premises hereby demised. The Lessee hereby expressly agrees that, if the same shall be made use of by him and his family, or servants, such use shall be, at his, or their, own proper risk, and that the Lessor, its successors, or assigns, or servants,

shall, in no event, be, or become, liable thereby, for any loss, or damage, to persons, or property, by reason of such use, or for any cause, in any event, even though caused, or occasioned, by the negligence of the Lessor, its servants or employees.

(b) Pursuant to article 12, section 200, of the General Business Law, page 1282, a safe is provided in the office of this hotel for the deposit and safekeeping, of all money, jewels, ornaments, or other valuable articles of small compass belonging to its guests. Unless so deposited, the Lessor shall not be liable for the loss thereof.

(c) The Lessee expressly waives the provisions of section 201 of article 12, of the General Business Law, and, as a condition of the making of this lease, hereby releases the Lessor from any liability by reason of loss of any wearing apparel, goods, merchandise, cane, umbrella, satchel, valise, bag, bundle, or other chattel.

17. That the telephone instrument in the demised premises belongs to the York Telephone Company; and the use of the same is permitted upon payment of the regular charges fixed by the Lessor. But the Lessor reserves the right to discontinue such service and remove the instrument, at any time without notice, and such discontinuance, or removal, shall not, in any manner, affect the obligations of this lease.

18. It is expressly stipulated and agreed by the Lessee that John Doe Hotel is an apartment hotel within the meaning and provisions of section 181 of article 8 of chapter 38 of the Laws of 1909, entitled "An Act in Relation to Liens constituting Chapter 33 of the Consolidated Laws," and that all the provisions of the said Act, and of any and all Acts amendatory thereof, or supplemental thereto, shall apply to the demised premises.

19. It is hereby expressly understood and agreed, that the character of the occupancy of said demised premises, as above expressed, is an especial consideration and inducement for the granting of this lease by said Lessor to said Lessee, and in the event of a violation by said Lessee of the restriction against sub-letting, or if the Lessee shall cease to occupy the premises, or permit the same to be occupied by parties other than as aforesaid, or shall violate any other restriction, or condition, therein imposed, this lease may, at the option of said Lessor, its agents, or assigns, be terminated in the manner hereinbefore recited.

20. That all bills rendered by the Lessor to the Lessee, whether

for restaurant, or café service, telephone service, laundry, or monies disbursed and expended by the Lessor for the Lessee, or any other charges, shall be deemed conclusive evidence of the amount due by the Lessee to the Lessor in any action, or proceeding, brought, or to be brought, against the Lessee, unless the Lessee shall have returned the said bills, and all papers delivered to him with such bills, specifying, in detail, his objection thereto in writing, within two days after the same shall have been sent, or delivered, to him; and the said Lessee covenants and agrees to pay same, and, also, agrees to pay for any of said charges herein specified furnished to a sub-tenant of the Lessee, any member of his family, or guest, or guests, of said Lessee.

21. It is further agreed by and between the parties hereto that, notwithstanding anything herein to the contrary thereof contained, the said premises are demised for a rental of three thousand (\$3,000) dollars for said term, payable at the time of the making of this lease, and that the provisions herein contained for the payment of said rent in installments are for the convenience of the Lessee only, and that, upon default in payment of the rent in installments as herein allowed, then the whole of the rent hereby reserved for the whole of the said period and then remaining unpaid shall, at once, become due and be payable, without any notice, or demand.

22. It is understood and agreed that the usual hotel house cleaning and chambermaid service shall be included in the above mentioned rental.

23. And it is, also, understood and agreed, that the bed linen for this apartment and laundry of same shall be furnished by the Lessor, under the terms of this lease, without further charge for the number of persons specified above, at the ratio of three hand towels and one bath towel per-day for each person, two sheets and two pillow cases for each bed twice each week, one spread for each bed each week; with a change of blankets when necessary; and the same shall be returned in good order, at the end, or other expiration, of this lease, and, in default thereof, shall be paid for at the full valuation. That, if any additional linen shall be furnished, the Lessee agrees to pay the usual charges for the same.

IN WITNESS WHEREOF, the Lessor has caused this indenture to be signed by its President, and its corporate seal to be hereunto

affixed, and the Lessee has hereunto set his hand and seal, the day and year first above written.

John Doe Hotel,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

RULES AND REGULATIONS OF THE JOHN DOE HOTEL FOR THE
MUTUAL BENEFIT OF OWNER AND TENANTS, AND AGREED
TO BY BOTH PARTIES AS A PART OF THIS LEASE.

1. The sidewalks, halls, passages and stairways shall not be obstructed by any of the tenants or be used by them for any other purposes than those of ingress to and egress from their respective apartments.

2. Floors, skylights and windows, reflecting, or admitting, light into passageways, or elsewhere in the building, shall not be covered, or obstructed by the tenants.

3. The water-closets and water apparatus shall not be used for any purpose other than that for which they are constructed, and no sweepings, rubbish, rags, or other articles, shall be placed therein. Any damage resulting from such misuse shall be borne by the tenant who causes it.

4. No signs, advertisements, or notices, shall be painted, or affixed, upon any part of the building, outside or inside, nor shall any article be suspended outside the building, or placed on the window-sills thereof, save with the consent, in writing, of the Lessor.

5. No tenant shall do, or suffer, or permit, anything to be done in said premises, or bring, or keep, anything therein, which will, in any manner, increase the rate of fire insurance on said building, or on property kept therein, or obstruct, or interfere with, the rights of other tenants, or do, or suffer, or permit, anything to be done, which shall conflict with the laws, regulations, rules and ordinances of the Fire Department, the Department of Buildings, and the Department of Health.

6. No noisy, or disorderly, conduct, or any conduct annoying, or

disturbing, to the occupants of the building, shall be permitted, in any part thereof, nor shall any tenant entertain therein any person of a bad, or loose, character, or of improper behavior. Practicing on any musical instrument before 8 A.M. or after 10 P.M. is not allowed.

7. No domestic, or wild, animals, or birds, shall be taken into, or kept in, or about, the building, save with the written consent of the Lessor, and any such consent shall be revocable by the Lessor, at will and without notice.

8. The halls of the building shall not be used, under any circumstances, as playing grounds for children, and no bicycles, or baby carriages, will be allowed therein. The same may be taken into the building through the service entrance and kept in a room provided for that purpose in the basement, but at the Lessee's risk.

9. No picture, or other, nails shall be driven in any part of the building, nor shall any portion of the same be marked, or, in any wise, altered, save with the written consent of the Lessor.

10. Nothing shall be thrown by the tenants, or by their servants, out of the windows, or down the air shafts, of the building, nor shall anything be hung out of the windows, or placed on the window-sills.

11. No servant employed by the Lessor shall be sent out of the building by any tenant, at any time, for any purpose.

12. No lamp, fixture, or appliance, of any sort shall be attached to, or connected with, the gas, or electric, fixtures within the demised premises, except such as are furnished, or approved, by the Lessor, nor shall the steam pipes, or radiators, be moved, or tampered with, in any manner whatsoever.

13. All kitchen and market supplies, bundles, parcels, household goods, furniture and baggage, shall be delivered in the basement, and will be conveyed by freight elevator, but at the Lessee's risk. Kitchen and other refuse and ashes will be removed in the evening, and must be ready at 8 P.M.

14. Servants, excepting nurses accompanying children, shall make entrance and exit to and from building through service entrance, and will not be permitted to use freight elevators, or lifts, or the general passenger elevators, but shall use passenger elevators set aside for servants, and they will not be allowed to stand, or loiter, in the halls, or on the stairs, or to be on the roof, or in the basement, except on business. No beggars, or peddlers, will

be allowed on the premises under any circumstances. Tradesmen are not allowed in main hall, and must use the service entrance.

15. All employees of the management are forbidden to solicit custom for any tradesmen, or to receive commissions from any tradesmen or tenant, under penalty of dismissal. Tenants are requested to make their own bargains for supplies, and to secure for themselves the most favorable terms. It is the urgent request of the Lessor that nothing shall be paid by way of commission, tip, or gratuity, to any employee of the management.

16. Talking by servants, or by employees, through elevator shafts is strictly prohibited. To avoid accidents, elevator doors must be kept closed when not in use.

17. The Lessor reserves the right to prescribe the weight and proper position of iron safes, or other extra heavy articles, and the manner of placing them in position; and the Lessee shall be liable for all damages to the building caused by taking in, moving or removing the same. Tenants shall neither take in nor remove any fuel from the building, without the written consent of the Lessor.

18. No cooking of food is allowed in this apartment.

19. The tenant shall not allow in the apartment a stove of any description.

20. The Lessor reserves the right to make such additional rules, from time to time, as shall, in the opinion of the Lessor, be necessary for the safety, cleanliness and general good of the premises.

No. 205.

Lease of building for long term of years, whereunder landlord is to contribute to expenses of altering the building, and tenant is given option to purchase, within specified time.²

AGREEMENT, made January 5, 1923, between Roe, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Landlord"), and Doe Corporation, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Tenant"),

² Adapted from *Matoaka Realty Co. v. Chevrolet Motor Co.* (1919), 187 App. Div. 233, 175 N. Y. Supp. 369.

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

FIRST: The Landlord hereby leases unto the Tenant, and the Tenant hereby hires from the Landlord, all that plot of land with the buildings and improvements thereon erected, in the Borough of Manhattan, City of New York, bounded and described as follows:

BEGINNING * * *

to be used by the Tenant, for the sale, exhibition and repair of carriages, automobiles and other vehicles and accessories, and automobile bodies, and for office purposes, and for no other purpose, unless consented to by the Landlord in writing, for the term, commencing at twelve o'clock noon on the 1st day of October, 1923, and ending at twelve o'clock noon on the 1st day of October, 1933, at the yearly rental of thirty-six thousand (\$36,000) dollars, to be paid to the Landlord, at its office in the Borough of Manhattan, New York City, in equal monthly installments, in advance, on the first day of each month, commencing on the 1st day of October, 1923.

SECOND: The above letting is upon the following express conditions, each and every one of which the Tenant covenants with the Landlord to keep and perform:

1. The Tenant agrees to pay said rent, at the time and in the manner aforesaid.

2. The Tenant agrees that it will not make any alterations, or additions, to said premises, or any part thereof, or remove any part thereof, or suffer, or allow, the same to be done, without the written consent of the Landlord first obtained, in each and every case, and all improvements and additions made by the Tenant, shall belong to the Landlord. But nothing in this clause shall, however, prevent the Tenant from making ordinary repairs, or alterations, which can be made, without injury to the structure of the building.

3. The Landlord shall, during the period covered by this lease, upon the written request of the Tenant, not later than the first day of January, 1924, pay to the Tenant the amount of such expenses, not exceeding twenty thousand (\$20,000) dollars, as shall have been paid, or incurred, by the Tenant for such alterations to said building on the said premises as may be made by the Tenant, with the prior written consent of the Landlord; and the Tenant will, during the period covered by this lease, pay to the Landlord

interest, at the rate of six (6%) per cent per annum on all sums paid by the Landlord to the Tenant for such alterations, pursuant to this paragraph; and said interest shall be computed from the respective dates of said payments by the Landlord, and be paid to the Landlord monthly, as part of the rent reserved herein, and in addition to the said sum of thirty-six thousand (\$36,000) dollars hereinbefore mentioned.

4. The Landlord shall not be responsible, or liable, for any personal injury, or damage, to the Tenant, or to any other person, nor for any injury, or damage, to the leased premises, or to the goods, wares, merchandise, or property, of the Tenant, or of any other person contained therein, arising from, or caused by, the electric wiring, plumbing, water, gas, steam, sewer, or other pipes, or by any machinery, or apparatus, or by any defect in, or leakage in, or breaking of, the same, or by leakage, running, or overflow, of water, or sewer, in any part of said premises, nor for any injury, or damage, caused by, or arising from, fire, lightning, wind, water, snow, or ice, beating upon, or coming through, the roofs, skylights, trap doors, windows or otherwise, nor from any other action of the elements, or for any injury, or damage, caused by, or arising from, the acts, or negligence, of the owner, or occupants, of adjacent, contiguous, or neighboring premises.

5. If any default shall be made in the payment of said rent, or any part thereof, at the times and in the manner above provided, or if default shall be made by the Tenant in the performance, or observance, of any of the covenants, or agreements, herein contained, or if the said premises, or any part thereof, shall become vacant, or be abandoned, or if the Tenant shall be dispossessed therefrom, during said term, or if the Tenant shall, at any time, make a general assignment for the benefit of creditors, or an insolvent assignment, or if a receiver of the property of the Tenant shall be appointed in any court of the United States, or of the State of New York, or if the Tenant shall file a voluntary petition in bankruptcy, or if a petition in bankruptcy shall be filed against the Tenant, this lease, and the relation of Landlord and Tenant, at the option of the Landlord, or its successors and assigns, shall wholly cease and determine, and the said Landlord and its successors and assigns may re-enter said premises, either by force, or otherwise, and receive the rent therefor, applying the same, first, to the payment of such expenses as said Landlord, or its represen-

tatives, may be put to in re-entering and letting, and, then, to the payment of the rent and fulfillment of the covenants of the Tenant, under this agreement, and then, to the payment to the Tenant of any surplus of said rents left after making such previous payments, and the said Tenant and its legal representatives shall be liable for any deficiency, which may arise, during the remainder of said term, and shall pay the same in equal payments, upon the rent days above provided, as the amounts shall, at such time, or times, be ascertained. The said Tenant, and its successors, and assigns, expressly waive any notice of proceeding, required by law to be given, or taken, preliminary to a re-entry by the Landlord.

6. The Tenant shall observe, and comply with, and be responsible for, and shall bear all the expenses of the observance and compliance with all ordinances, rules, regulations, or requirements, relative to the above described premises and the appurtenances, including, also, all the requirements made in the enforcement of the present, or future, laws applicable to the building, excepting outside structural alterations, affecting the entire building, and, particularly, shall not allow any accumulation of refuse matter of any kind to remain on, or about, the premises, and will keep the sidewalks, including the curb, free from ice and snow; and the Tenant shall be liable for and save the Landlord harmless from any liens incurred, or any penalty, claim, or damage, imposed, made, or recovered, by reason of the neglect of the Tenant to observe said laws, ordinances, rules, regulations or requirements, or to do as aforesaid; and it is expressly understood and agreed that, should the Tenant fail, or neglect, promptly to execute and comply with any such laws, rules, orders, ordinances, regulations, or requirements, aforesaid, then the Landlord shall have the right, at its option, to comply therewith, for the account of the Tenant, and the Tenant hereby agrees to pay all the expenses incurred in executing and complying therewith, which expense shall be deemed additional rent and be payable with the next installment of rent therefor due under this lease.

7. The Tenant shall promptly pay and discharge, when, and as, the same shall become due and payable, all taxes and assessments, which may, during the term hereby granted, be imposed and charged upon said building and leased premises, and, also, all water rates, rents and charges, which are, or may become, imposed for, or in respect of, the Croton, or other water; and, in case the

Tenant shall fail to pay any such tax, or assessment, or any such water rent, rate, charge, or any part thereof, as the same shall become due and payable, the Landlord, in addition to all other legal remedies, may pay such tax, or assessment, or such water rate, rent, or charge, or any part thereof, and all interest and penalties, which may be accrued and become due and payable thereon, and the amount so paid, with interest, shall be immediately due and payable, and shall be paid by the Tenant to the Landlord, as additional and further rent for said premises. If, however, the Landlord shall receive an award as a result of any such assessment, then, and in that event, the Tenant shall be entitled to receive from the Landlord, out of such award, the amount of such assessment as shall have been previously paid by the Tenant, pursuant to the terms hereof.

8. It is further mutually understood and agreed that, in all cases under this instrument, it shall be *prima facie* evidence of the fact of the existence of a tax, or other charge, being due, if the Landlord shall produce a certificate of the Comptroller of the City of New York, or other officer of said City, or of any proper officer entitled to give such certificate, to the effect that such charge, or tax, appears of record on the books in his office and has not been paid.

9. It is mutually covenanted and agreed that, if the Landlord, its successors and assigns, shall pay, or be compelled to pay, any sum of money, or to do any act, which shall require the payment of any sum of money, by reason of the failure of the Tenant, its successors and assigns, to perform any one, or more, of the covenants herein contained, the sum, or sums, so paid by the Landlord, its successors and assigns, together with all interest, costs and damages, shall be added to the rent becoming due on the first of the next ensuing month, or on the first day of the subsequent month succeeding such payment, and shall be collectible as additional rent, in the same manner, and with the same remedies, as if it had been originally reserved as rent hereunder.

10. The leased premises shall be used and occupied, as aforesaid, but shall not be used so as to injure the structure of the building. The Tenant shall not, however, be at liberty to use said premises for any purpose, nor in any way, in violation of the laws of the State of New York, or of the ordinances of the City of New York, or the rules of any of the Municipal Departments having jurisdic-

tion thereof, nor, for any purpose, which shall invalidate the fire insurance policies delivered to the Landlord. The Tenant further agrees to comply with all rules, or requirements, of the New York Board of Fire Underwriters, or any other body, which may occupy a similar position, and with all provisions of the usual New York Standard form of fire insurance policy.

11. The Tenant agrees to allow the usual notice of "For Sale" or "To Let" to be put upon the outside of said premises, and to remain thereon, without molestation, or hindrance, during the three months previous to the expiration of the term of this lease, and shall, upon written permit of the Landlord, or its agents or representatives, allow the premises to be seen by any person desiring to purchase, or hire, the same.

12. The Tenant agrees with the Landlord, and its successors and assigns, that no consent of the Landlord, or its successors and assigns, given hereunder, in any instance, shall operate as a waiver of any provision of this agreement, except for that instance alone. It is expressly agreed that no waiver, or act, which shall amount to a waiver by the said Landlord, or its representatives, in any instance, shall operate as a waiver of any provision of this agreement, except for that instance alone.

13. It is further mutually understood and agreed that the receipt of any rent, whether the same be that originally reserved, or that which may become payable, under any of the covenants herein contained, or any portion thereof, shall not be deemed to operate as a waiver of the right of the Landlord, its successors and assigns, to enforce the payment of rent of either kind previously due, or the forfeiture of this lease by such remedies as may be appropriate.

14. The Tenant hereby expressly waives for itself, and all persons claiming under it, all right to redeem the premises, under the provisions contained in Sections 1437 and 1438 of the Civil Practice Act, or otherwise, if a warrant to dispossess shall have been issued, or if a judgment in an action in ejection shall have been made, or entered.

15. It is hereby agreed that the mailing of a written notice and demand, enclosed in a sealed post-paid envelope, addressed to the Tenant, at said premises, by depositing it in any post-office station, or letter box, shall be sufficient notice and demand, in any case arising under this agreement.

16. The Tenant, its legal representatives, or assigns, or some of them, shall, and will, on the last day of the term hereby demised, or other former termination of the estate hereby granted, quit and surrender and deliver up the hereby demised premises unto the possession of the said Landlord, its successors and assigns, without fraud, or delay.

17. The Tenant hereby agrees not to sell, or assign this lease, or any part thereof, or to sublet the premises, or any part thereof, without the written consent of the Landlord, its successors and assigns, first obtained, in each and every case; and the Tenant further agrees that nothing contained herein, or in any assignment, which may be consented to, or in such consent, shall relieve, or be construed to relieve, the Tenant named herein, its successors and assigns, from any liability for, or upon, the covenants in this lease contained. But the Landlord may, however, deal with such assignee, in regard to any question, or waivers, under this lease, as if such assignee were the Tenant named in this lease, and such acts, which would not have relieved the Tenant named in this lease, had it continued as Tenant, shall not relieve it on account of such assignment.

18. The Tenant agrees and covenants that it will keep the building and premises, outside and inside, in good and substantial repair, and will deliver said building and premises, at the termination of said lease, in good repair and first class condition, to which end, the said Tenant hereby specially contracts, under penalty of forfeiture and damage, that it will, at all times, not only repair said demised premises, but the machinery in connection with heating and elevator apparatus, and any other equipment, which may be placed in said premises, and will, from time to time, if necessary, renew the same, to the end that all the aforesaid, at the termination of this lease, shall be delivered in good condition, reasonable wear and tear excepted.

19. The Tenant further covenants that it will, during the whole of the term demised, keep the building and hereby demised premises insured in such companies as the Tenant may select and the Landlord approve, and in such amount, not exceeding eighty (80%) per cent of the value of the building, as the Landlord may direct, against loss, or damage, by fire, and against all acts of belligerents in case of war, and shall, also, keep the windows and plate glass therein insured against loss, or damage, by accident;

and that such insurance shall be made in the name of the Landlord, its successors and assigns, and the policy, or policies, shall be delivered to, and held by, it; and, in default of payment by the Tenant of any of the premiums for the said insurance, when payment thereof shall be demanded by the Landlord, if default shall continue for twenty (20) days, the Landlord may pay the same, and the amount of the premiums, so demanded, shall be, and hereby are, declared to be rent, and such rent shall be added to the rent becoming due on the first day of the next month, or on the first day of any succeeding month, and such month's rent shall be increased by the amount of such premiums, or other charges, so remaining unpaid, and summary proceedings for the removal of the Tenant from the possession of the said premises, for the non-payment of the said added rent, may be prosecuted in the same manner, as and for the rent of the said premises herein reserved.

20. It is further agreed that, if, at any time, during the term of this lease, said building, or any part thereof, shall be damaged by fire, the same shall be repaired, or rebuilt, as speedily as possible, at the expense of the Landlord, its successors and assigns. In case the damage shall be so extensive as to destroy the building, or to render it untenable, the rent shall cease, until such time as the building shall be put in complete repair. In case any question shall arise between the parties to this lease as to whether or not such repairs, or rebuilding, has been done within a reasonable time, due allowance shall be made for any delay, which may arise in connection with the adjustment of the fire insurance loss, or by reason of delays growing out of what are commonly known as "strikes."

21. It is understood and agreed that the elevators and machinery in connection therewith in said building, shall be operated by the Tenant, at such times and hours, and in such ways, as it deems proper, and, at its own expense, and that the Landlord shall not, in any way, be responsible for any damage, arising from the operation, management, or condition, of such elevators, or machinery.

22. In case, however, the Tenant shall assign this lease, without having first obtained the written consent of the Landlord, the receipt of rent by the Landlord from such assignee shall not be deemed a waiver of the right of the Landlord, at any time thereafter, to elect to forfeit and determine said lease, and the consent, or the waiver of consent, by the Landlord as to one assignment

shall not be deemed to do away with the necessity of obtaining its consent to any other assignment or assignments.

23. The Landlord, for itself and its successors, does covenant and agree to and with the Tenant, its successors and assigns, that, on the said Tenant paying the rent above reserved, and performing the covenants and agreements on its part, the Tenant shall, and may, at all times, during the term hereby granted, peaceably have, hold and enjoy the said demised premises, without any manner of let, suit, trouble, or hindrance, of and from said Landlord, its successors and assigns, or any other person, or persons, whomsoever.

24. It is further understood and agreed that the covenants and agreements contained in the foregoing lease are binding upon, and shall apply to, the parties hereto, their respective legal representatives, successors and assigns.

25. Whenever the right to re-enter is mentioned in this lease, it shall not be deemed to exclude the right to enter and remove the Tenant and those claiming under it, by means of summary proceedings, as prescribed in the Civil Practice Act; and the Landlord shall have the right to invoke any other remedy, provided by law, in case of breach of the covenants of this lease by the Tenant, as if express consent to re-enter and summary proceedings were not given.

26. Notwithstanding the provisions of Clause "17," the Tenant shall be at liberty to sublease, without the consent of the Landlord, parts of the building for the conduct of lines of business similar to those to be carried on by the Tenant therein, under the provisions of this lease, subject, however, to all the provisions and conditions of this lease.

27. A violation, or attempted violation, or threatened violation, of any covenant, or condition, of this lease, by, or on the part of, the Tenant, or anyone holding, or claiming, under the Tenant, shall be restrainable by injunction, which shall be a cumulative remedy, in addition to every other remedy given by this lease, or now, or hereafter, existing by law, either independently of, or in connection with, the provisions of this lease.

28. This lease shall be subject and subordinate to any mortgage, or mortgages, not exceeding, in the aggregate, eighty (80%) per cent of the value of said premises, as appraised by the Doe Guar-

ANNOTATED FORMS OF AGREEMENT

Trust Company of New York, now, or hereafter, present upon said premises, or any part thereof. The Tenant agrees to execute and deliver, at any time, on demand, any instrument, or instruments, subordinating this lease to any and all such mortgages, and, upon failure so to do, the Landlord, or any successor in interest, is hereby appointed attorney in fact for the Tenant, to execute such instrument or instruments, and is hereby authorized to execute the same.

29. If the whole, or any part, of the premises hereby leased shall be taken by the City, County or State, authorities, for any public purpose, then the term of this lease shall cease, from the time of possession of the part so taken and required for such public purpose, and the rent shall be paid up to that date. If, by such authority, or by title paramount, possession, or use, of the appurtenances to said building, such as vaults, show windows, porches, or any other things, or property, outside of the boundary of the land owned by said Landlord, shall be discontinued, such discontinuance shall, in no way, affect the liability of the Tenant to pay the full rent, or to perform all of the covenants contained in this lease.

30. The said Tenant shall have the option, or privilege, of purchasing the said premises, within one year from the 1st of October, 1923, for the sum of eight hundred thousand (\$800,000) dollars, less the total amount of principal and accrued interest to date of transfer of title, of any and all mortgages on said premises, at the time of such purchase; and, in such event, net rents hereinbefore reserved shall be apportioned as of the date of transfer of title.

31. Upon the execution and delivery of this agreement, the Tenant shall deposit with the Landlord the sum of ten thousand (\$10,000) dollars, to be applied on account of the rent heretofore reserved, and receipt of such sum is hereby duly acknowledged by the Landlord; and the Landlord shall pay to the Tenant interest on said sum of ten thousand (\$10,000) dollars, at the rate of three (3%) per cent per annum, from the date of such deposit to the respective dates of application of said sum of ten thousand (\$10,000) dollars to the payment of the rent hereinbefore reserved, pursuant to the terms hereof.

IN WITNESS WHEREOF, each of the parties hereto has signed this instrument, by its President, thereunto duly authorized, and has

caused its corporate seal to be affixed, attested by its Secretary, the day and year first above written.

Roe, Inc.,
By Richard Roe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Doe, Inc.,
By John Doe,
President.

(Seal)

Attest:

Henry Koe,
Secretary.

No. 206.

Lease of part of building.³

AGREEMENT, made January 5, 1923, by Doe & Company, Inc., a corporation, duly organized under the laws of the State of New York, and having an office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Landlord"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Tenant"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

FIRST: That the Landlord hereby leases to the Tenant, and the Tenant hereby hires from the Landlord, the entire first floor of the Doe Building, situated at No. 37½ Broadway, Borough of Manhattan, New York City, for a term of five (5) years (or until the said term shall sooner cease under the provisions hereof), to commence on the 5th day of January, 1923, at noon, and to end at noon on the 5th day of January, 1928, at the annual rental of three thousand (\$3,000) dollars, lawful money of the United States, which the Tenant covenants to pay to the Landlord, at its principal office in the City of New York, in equal monthly installments, in advance on the first day of each month, during the said term.

SECOND: That this lease is subject to all present, or future, mortgages, or deeds of trust, affecting the demised premises.

³ Cf. *Lyon v. Herscy* (1886), 103 N. Y. 264, 8 N. E. 518.

THIRD: That this letting is upon the following express conditions, each of which the Tenant covenants will be observed and performed, throughout the said term, and any violation of any thereof, if followed by written notice so declaring, given by the Landlord, or its duly authorized agent, and served upon the Tenant, or left upon the demised premises, shall terminate the estate hereby granted, that is to say:

1. The premises hereby leased shall be used and occupied by the Tenant as and for office purposes, and for no other purpose.

2. Without the prior written consent of the Landlord, the term hereby demised shall not be assigned by operation of law, or otherwise, nor shall the Tenant let, underlet, or permit to be used by others for hire, the leased premises, or any part thereof, without the like consent.

3. The Tenant shall not make any alterations in, additions, or improvements to the leased premises, without the prior written consent of the Landlord.

4. The Tenant and the clerks, servants, agents and visitors of the Tenant shall faithfully comply with and observe the rules and regulations hereinafter set forth, or hereafter to be made, in accordance with the provisions of this lease.

FOURTH: That the parties covenant, as follows:

(a) In case the leased premises shall be deserted, or vacated, the Landlord shall have the right to enter the same as the agent of the Tenant, either by force or otherwise, without being liable to any prosecution therefor, and to re-let the same as the agent of the Tenant, and to receive the rent therefor, and to apply the same to the payment of the rent due hereunder, holding the Tenant liable for any deficiency.

(b) The Tenant shall take good care of the leased premises and the fixtures therein, and, at the expiration, or other termination of the term, shall surrender the said premises and fixtures in as good condition as reasonable use will permit.

(c1) All injury to the building, or fixtures, caused by moving the property of the Tenant into, in, or out of, the said building, and all breakage, or other injury, done by the Tenant, or the agents, clerks, servants, or visitors, of the Tenant, as well as any damage caused by the overflow, or escape, of water, steam, gas, electricity, or other substance, due to the negligence of the Tenant, or the

agents, clerks, servants, or visitors, of the Tenant, shall be repaired by the Landlord, at the expense of the Tenant.

(c2) The cost thereof shall be determined on statements rendered by the Landlord to the Tenant, and the sum so determined shall be payable to the Landlord, upon delivery of such statement; and, if not paid by the Tenant within ten (10) days thereafter, the said sum shall become so much additional rent for the succeeding month, payable with the installment of rent next becoming due, and collectible as such.

(d) All alterations, additions to, or improvements upon, the leased premises, or the building, made by either party (except movable furniture put in at the expense of the Tenant, and movable, without defacing, or injuring, the building, or leased premises), shall become the property of the Landlord, and shall remain upon, and be surrendered with, the premises as a part thereof, at the end of the term, without disturbance, molestation or injury.

(e1) In case of injury to the demised premises, or appurtenances, by fire, or other cause, the Tenant shall give immediate notice thereof to the Landlord. If the demised premises shall be damaged by fire, or other cause, without the fault, or neglect of the Tenant, or of the agents, clerks, servants, or visitors, of the Tenant, the injury shall be repaired, at the expense of the Landlord, as speedily as possible, after such notice; but, if, without such default or neglect, the demised premises shall be rendered untenable by the elements, or by any other cause, the rent shall cease, until the same shall be repaired as aforesaid.

(e2) If, without such fault or neglect, the building shall be destroyed by the elements, or any other cause, or so nearly destroyed as to require rebuilding, the rent shall be paid up to the time of such destruction, and from thenceforth this lease shall cease and come to an end.

(e3) No compensation, or claim, will be allowed or paid by the Landlord, by reason of inconvenience, annoyance, or injury to business, arising from the necessity of repairing any portion of the building, however the necessity may occur.

(f) The Landlord shall not be liable for any damage to any property, or person, at any time in the leased premises, or building, from steam, gases, or electricity, or from water, rain, or snow, whether they may leak into, issue or flow from any part of said building, or from the pipes or plumbing works of the same, or

from any other place or quarter. The Tenant shall give to the Landlord, or to its agent, prompt written notice of any accident to, or defect in, the water pipes, warming apparatus, or electric wires, and the same will be remedied by the Landlord, with due diligence, subject to the provisions of the paragraph numbered "(b)" above.

FIFTH: (a) The Landlord, at its own expense, will furnish steam heat to warm the leased premises from the tenth day of October to the first day of May in each year, and, also, will install a water meter and furnish a reasonable quantity of water, at rates fixed by the public water authorities for water measured by meter, and the Landlord will furnish a reasonable amount of electricity for lighting the leased premises, at five (\$.05) cents per kilowatt hour; but the Landlord shall not be liable for any failure to supply such heat, water, or electricity, not due to gross negligence on its part.

(b) The Tenant shall pay the charges for such water and electricity, monthly, upon bills rendered by the Landlord to the Tenant, and, if not so paid, the amounts thereof shall be added to and become additional rent for the month succeeding that wherein such water and electricity was used, and shall be collectible as such.

(c) The Landlord reserves the privilege of stopping the service of the steam, water and lighting system, at such times as may be necessary, by reason of accident, repairs, alterations, or improvements, desirable, or necessary, to be made, until such time as such repairs, alterations or improvements shall have been completed.

SIXTH: The Landlord, or its agents, shall have the right to enter the leased premises, at reasonable hours in the day, to examine the same, or to make such alterations and repairs as may be deemed necessary, or to exhibit the same for hire to applicants, and to put on them the usual notice "To Let," which said notice shall not be removed by the Tenant, during the three (3) months next preceding the time of the expiration of this lease.

SEVENTH: The Landlord shall keep the unleased portions of the said building in good and substantial repair, so far as concerns the Tenant; but no liability to the Tenant shall accrue under this covenant, until the Tenant shall have given notice in writing to the Landlord, or its agents, of the specific repairs required to be made. And nothing herein contained shall affect the liability of the

Landlord, in case of the destruction of the building, or the demised premises, or injury to the same by fire, or other cause.

EIGHTH: The Tenant covenants that the following rules, regulations and stipulations, and such other and further rules and regulations as the Landlord may make, being, in the Landlord's judgment, needful for the safety, care and cleanliness of the building and premises, or the comfort of the Tenants, shall be faithfully observed and performed by the Tenant, and by the clerks, agents and visitors of the Tenant, unless waived by the Landlord, that is to say:

(a) The sidewalks, entries, passages, elevators and staircases shall not be obstructed, or used for any other purposes than ingress and egress.

(b) The sashes, sash-doors, windows, glass doors, and any lights, or skylights, that reflect, or admit, light into the halls, or other places, of said building, shall not be covered or obstructed.

(c) The water and wash closets and urinals shall not be used for any other purpose than those for which they were constructed, and the expense of any breakage, stoppage, or damage, resulting from a violation of this rule, shall be borne by the Tenant, who, or whose clerks, agents, servants or licensees, shall have caused it.

(d) Except for the purpose of performing any duties under this lease, the Tenant shall not mark, paint, drill into, or, in any way, deface, the walls, ceilings, partitions, floors, wood, stone or iron work.

(e) No sign, advertisement, or notice, shall be inscribed, painted or affixed on any part of the outside, or inside, of the building, except on the window glass and sash-doors of stores, and then only of such size, color and style as the Landlord shall determine.

(f) The workmen of the Landlord must be employed by the Tenant for repairs and other similar work that may be done on the demised premises.

(g) No Tenant shall do, or permit, anything in said premises, or bring, or keep, anything therein, which shall, in any way, increase the rate of fire insurance on said building, or on the property kept therein, or obstruct, or interfere with, the rights of the other Tenants, or in any way injure, or annoy, them, or those having business with them, or conflict with the regulations of the Fire Department, or the fire laws, or with any insurance policy upon said building, or any part thereof, or with any rules and

ordinances established by the Board of Health or other governmental authorities.

(h) The Tenant shall not use any other method of heating than that supplied by the Landlord.

(i) The Landlord shall have power to prescribe the weight and position of safes, which shall, in all cases, stand on two-inch thick plank strips to distribute the weight thereof. All damage done to the building by taking in, or putting out, a safe, or due to its being on the premises, shall be repaired at the expense of the Tenant. The moving of safes shall occur between 7 A.M. and 9 A.M., and between 4 P.M. and 6 P.M., upon previous notice to the janitor, and the persons employed to move the safes in and out of the building must be acceptable to the Landlord.

(j) No freight, furniture, or bulky matter of any description, will be received into the building between the hours of 9 A.M. and 4 P.M.

(k) The Tenant shall not cause any unnecessary labor, by reason of carelessness and indifference to the preservation of good order and cleanliness in the Tenant's premises and in the building.

(l) Nothing shall be thrown by the Tenant, his clerks, servants or licensees, out of the windows, or doors, or down the passages of the building.

(m) No birds or other animals shall be brought, or kept, in, or about, the building.

NINTH: (a) The Tenant further agrees that his covenants and agreements herein contained shall be deemed conditions as well as covenants, and that, if default shall be made in any of such covenants and agreements, this lease shall become null and void thereupon, if the Landlord shall so elect, and the Landlord shall have the right to re-enter, or take possession of, the demised premises, either by force or otherwise, and dispossess and remove therefrom the Tenant, or other occupants thereof, and their effects, and to hold said premises as if this lease had not been made; and the Tenant hereby expressly waives the service of intention to re-enter, or of instituting legal proceedings to that end.

(b) In case of such default and re-entry, or resumption of possession, or in case the term shall cease upon breach of any of the conditions of this lease and notice as aforesaid, or in case the Tenant shall be dispossessed for any cause, the rent shall be paid up

to the time of such re-entry, resumption of possession, dispossession, or cessation, of the term, *pro rata*; and thereafter, at the end of each month, during the term stated herein, the Tenant shall pay to the Landlord the difference between the receipts by the Landlord up to that time for rent of said premises as compared with the full amount receivable by the Landlord up to that time for such rent, under the foregoing provisions hereof; but such payment shall be returned to the Tenant at the end of the term stated herein, so far as may be, out of any excess of rents received by the Landlord from said premises over the rents receivable according to the said provision during said term.

(c) No right of redemption shall be exercised under any present, or future, law, in case the Tenant shall be dispossessed for any cause, or if the Landlord shall, in any other manner, obtain possession of the demised premises, in consequence of the violation of the covenants of the Tenant herein contained.

(d) The Landlord may restrain any threatened breach of the covenants to observe the conditions of this lease, or of any other covenants herein contained, but the mention herein of any particular remedy shall not preclude the Landlord from any remedy it might have either in law or in equity; nor shall consent to one act, which would otherwise be a violation, or waiver of, or redress for, one violation, either of covenant or condition, prevent a subsequent act which would originally have constituted a violation from having all the force and effect of an original violation.

TENTH: Interest at the rate of six (6) per cent per annum shall be charged against the Tenant on all sums of rent remaining unpaid for more than five (5) days, and such interest shall commence on the day such rent is due and payable, and the Tenant hereby agrees to pay said interest.

ELEVENTH: After the space hereby rented shall have been partitioned and divided, according to plans which shall have been approved by the Tenant, any change, or alteration, made shall be at the expense of the Tenant.

TWELFTH: The provisions hereof shall bind the parties hereto, and shall bind and enure to the legal representatives, successors and assigns of the parties, respectively.

IN WITNESS WHEREOF, the Landlord has caused this instrument to be executed by its President, thereunto duly authorized, and its

corporate seal to be affixed, attested by its Secretary, and the Tenant has hereunto set his hand and seal, the day and year first above written.

Doe & Company,
By John Doe.
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

In the presence of
Henry Koe.

No. 207.

Lease of space at fashion exposition.⁴

AGREEMENT, made January 5, 1923, between the Doe Exposition Corporation, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "Corporation"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Exhibitor"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The Exhibitor hereby hires from the Corporation space No. 24, as designated on the official diagram for the fashion exposition to be held in Doe Square Garden, in the Borough of Manhattan, New York City, from February 5th, 1923, to March 5th, 1923, inclusive, and agrees to exhibit therein only the product hereinafter designated; and the Corporation hereby agrees to hold and reserve said space for the Exhibitor, during said fashion exposition.

2. The Exhibitor shall pay to the Corporation for said space the sum of two hundred (\$200) dollars, as follows: One-quarter thereof, upon the signing of this agreement, which sum shall be returned to the Exhibitor, if this agreement is not accepted as herein provided, and the balance thereof on January 31, 1923.

⁴ Cf. *Dennecke v. Miller & Son* (1909), 142 Ia. 486, 119 N. W. 380, 19 Ann. Cas. 949; *Mehlman v. Atlantic Amusement Co.* (1909), 65 Misc. 25, 119 N. Y. Supp. 222.

3. If the Exhibitor shall fail to comply in any respect with the terms of this agreement, then the Corporation shall have the right, without notice to the Exhibitor, to sell or to offer for sale, at public or private sale, the space hereby leased; and the Exhibitor shall be liable for any deficiency, loss or damage suffered by the Corporation, by reason thereof, which loss, deficiency or damage, the Exhibitor agrees to pay to the Corporation, upon demand, together with any reasonable expenses and costs incurred by reason thereof. But it is mutually agreed that actual occupation of said space by a properly attended exhibit is of the essence hereof; and, should the Corporation be unable to effect a sale of the space herein provided, then, and in such event, the Corporation is expressly authorized to occupy, or cause said space to be occupied, in such manner as it may deem best for the interests of said fashion exposition, without any rebate, or allowance, whatsoever therefor to the Exhibitor, and without, in any way, releasing the Exhibitor from any liability hereunder; and the Exhibitor expressly agrees to pay to the Corporation the full sum hereinabove set forth.

4. Should the Corporation consider it inadvisable to hold the said fashion exposition at the time and in the place herein provided, then the Corporation shall have the right to change the date when and place where the same shall be held, by giving to the Exhibitor written notice thereof, by mail, addressed to the address given below, at as early a date as may be practicable.

5. The Exhibitor shall not, without the written consent of the Corporation, assign, or sublet, any part of said space.

6. The conditions, rules and regulations, which are printed on the reverse side hereof, are hereby made part hereof, and incorporated herein, and the Exhibitor agrees to be bound by each and every one of them; and the Corporation shall have full power, in the matter of interpretation, amendment and enforcement of all of said conditions, rules and regulations; and any such amendment, when made and brought to the notice of the Exhibitor, shall be, and become, a part hereof, as though duly incorporated herein, and subject to all the terms and conditions herein set forth.

7. No agreement with reference to the matters herein contained shall become a part hereof, unless duly endorsed hereon.

8. The Exhibitor agrees to exhibit shoes only.

IN WITNESS WHEREOF, the Corporation has signed this instru-

ment, by its President, thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary, and the Exhibitor has hereunto set his hand and seal, the day and year first above written.

Doe Exposition Corporation,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

(Reverse Side.)

*Conditions, Rules and Regulations Governing the Fashion
Exposition.*

CHARACTER OF EXHIBITS: The Management will prohibit the installation of any exhibit not approved of by it. Distribution by the Exhibitors of any printed matter, souvenirs, or other articles, shall be restricted to the space occupied by their exhibits.

BUREAU OF INFORMATION: Will open January 10, 1923, and will be located in the Main Lobby. All mail will be received there, and will be distributed to the Exhibitors as quickly as possible.

INSURANCE AND LIABILITY: Insurance, if desired, by the Exhibitors, must be obtained at their own cost and expense. The Management assumes no risk, and by the acceptance of this agreement, the Exhibitors expressly release the Management of, and from, any and all liability for any damage, injury, or loss, to any person, or goods, from any cause whatsoever.

RECEIPT OF GOODS: Goods will be received at the Shipping Entrance of the Exposition by Receiving Clerk there on duty. Goods should be plainly marked and **ALL CHARGES PREPAID**. This Receiving Office will open January 10, 1923, at 8 A.M., and all exhibits should be in place by 6 P.M., January 30, 1923.

CARE OF EXHIBITS: Exhibits must be cleaned and put in proper shape between the hours of 11 P.M. and 12 noon, each day. Cleaning, or arranging, of exhibits will not be permitted, at any other time. Booths not cleaned by noon each day will be cleaned by the Management, at the expense of the Exhibitors.

DECORATIONS, SIGNS, PLANS, ETC.: All decorations must be fire-

proof. The price in this contract includes uniform booth with rails and sign. No partitions, or railings, over four feet in height will be permitted between exhibition spaces, except upon written consent of the Management. Exhibitors will be permitted to place signs over their space, the top of which must not exceed ten feet from the floor, and the bottom of which must be eight feet from the floor.

Any special wiring, electrical or other work, gas or water connections, shall be done by the Exhibitors, who shall hire and pay the official decorator of the Exposition.

REMOVAL OF GOODS DURING EXPOSITION: No exhibit, or portion thereof, may be removed from the building, during the exposition, without the consent of the Management thereto in writing. Removal of goods from the building must be effected through the shipping entrance. This rule shall not apply to small articles, which make up cash sales.

EXHIBITION HOURS: The Exposition will open February 5th, 1923, at 7 P.M. and each day thereafter at 1 P.M., and will close at 11 P.M., every day up to and including March 5th, 1923.

TICKETS: General admission tickets will be sold at the Box Office at fifty cents each. Every Exhibitor will receive for distribution, free of all charge, two trade tickets for each dollar's worth of space.

EMPLOYEES' PASSES OR BADGES: Will be issued, after payment shall have been made for space, upon receipt of a written application from Exhibitors, giving names and duties of employees constantly employed in their booths. Passes may, also, be obtained at the Bureau of Information, at any time after noon, January 10th, 1923.

REMOVAL OF GOODS: Exhibits must be removed from the building by noon, March 10th, 1923.

AMENDMENTS: All points not covered herein shall be subject to the decision of the Management, which shall bind the Exhibitors.

No. 208.

Lease of space for show-case purposes.⁵

January 5, 1923.

Doe Advertising Co.,
No. 111½ Broadway,
New York City.

Gentlemen:

I hereby lease from you, upon the terms and conditions printed on the back hereof, the space on the east and south sides of the tile wall, adjoining Koe's Parcel Check Booth and Telegraph Office, near the Church Street entrance of concourse of the Doe Terminal Station, being seventy (70) inches long on the south side and thirty-six (36) inches long on the east side, by sixty (60) inches high and eighteen (18) inches deep, for a term of six (6) months, commencing March 5, 1923, and, in consideration thereof, I agree to pay you the sum of fifty (\$50) dollars a month, in advance, during the term of this contract.

Richard Roe,
No. 37½ Broadway,
New York City.

Doe Advertising Company agrees to lease the said space, for the term, and for the consideration, and upon the terms and conditions herein set forth.

Doe Advertising Co.,
By John Doe,
President.

(Reverse Side.)

1. The space shall be used by the Lessee only for the display of shoes in a show-case. Such show-case shall be supplied by the Lessee, but shall, before its installation, be approved by the Advertising Company for style, form and construction.

2. The Advertising Company shall not be responsible for the safety of the said show-case, or of its contents.

3. All signs and advertising matter used in the space shall be subject to the approval of the Advertising Company in respect of style and contents.

⁵ Cf. *Roberts v. Lynn Ice Co.* (1905), 187 Mass. 402, 73 N. E. 523.

4. A reasonable amount of electricity shall be supplied by the Advertising Company, for lighting the said show-case.

5. If, for any cause, before the termination of this contract, the Advertising Company shall cease to have the right to maintain, control, or continue the particular space herein specified, or any part thereof, the right is reserved by it to cancel this contract, and a *pro rata* reduction shall be allowed for the space discontinued.

6. All payments shall be made to Doe Advertising Company, or order.

7. This contract conveys no right to the Lessee to assign, or sublet, the space leased under it, or to require the Doe Advertising Company to let, or sublet, the space to any other party.

8. No verbal conditions made by any agents, not incorporated herein, shall bind either party hereto.

No. 209.

Agreement for subletting of store, with option to renew.^a

THIS INDENTURE, made January 5, 1923, by John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Lessor"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Lessee"), WITNESSETH:

WHEREAS, by an agreement, bearing date of January 5, 1922, the Koe Company, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 57½ Broadway, Borough of Manhattan, New York City, leased to the Lessor the store in the building No. 11½ Broadway, Borough of Manhattan, New York City, for a term of eight years, to commence on January 5, 1922, and to end at noon on January 5, 1930, a copy of which lease is hereto annexed as "Exhibit A," and is hereby made a part hereof; and

WHEREAS, the Lessor desires to sublet the premises above described, leased by said agreement of January 5, 1922, and the Lessee agrees to accept such sublease:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. The Lessor hereby leases to the Lessee, and the Lessee hereby hires from the Lessor, the premises above described, at No. 11½

^a Cf. *Bedford v. Terhune* (1864), 30 N. Y. 453.

Broadway, Borough of Manhattan, New York City, for the term of one year, to commence on the date hereof, and to end on January 5, 1924, at noon, at the annual rental of twenty-four hundred (\$2,400) dollars, to be paid by the Lessee to the Lessor in equal monthly installments in advance, on the first day of each month.

2. The premises leased shall be used as a shoe store only.

3. The Lessee shall not, without the prior written consent of the Lessor and of the owner of the building first obtained, assign the term hereby demised, nor shall it be assigned by operation of law, or otherwise, nor shall the Lessee let, underlet, or permit the said premises, or any part thereof, to be used by others for hire.

4. If the Lessee shall have observed and complied with all the terms and conditions of this lease, it is agreed that he shall have the right to renew this lease for a further period of three (3) years from January 5, 1924, provided he shall have notified the Lessor in writing, on or before December 5, 1924, that he desires such renewal, and provided, further, that he shall sign, or offer to sign, a new lease, upon the same terms and conditions as the present lease, except as to the time and the option of renewal.

5. All the terms, covenants and conditions in the lease between the Koe Company and the Lessor, hereto attached as "Exhibit A," are hereby made a part hereof (except as otherwise herein expressly provided for), and are hereby incorporated in, and made a part of, this lease; and such rights and obligations as are contained in said "Exhibit A" are hereby imposed upon the respective parties hereto. the Lessor herein being substituted for the Lessor in said agreement, and the Lessee herein being substituted for the Lessee in said agreement; provided, however, that the Lessor herein shall not be liable for any defaults caused by his landlord, the Koe Company.

6. If the Lessee violates any conditions, or condition, of this agreement, then such violation, or violations, if followed by written notice so declaring given by the Lessor, or his duly authorized agent, and served upon the Lessee, or left upon the demised premises, shall terminate the estate hereby granted.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.),

Richard Roe (L.S.).

In the presence of

John Jones.

[Annex Copy of Original Lease.]

SECTION 2.—MISCELLANY.

(A).—Covenants by Landlord.

No. 210.

Covenant by landlord to erect theatre.⁷

The Landlord agrees to cause to be erected on said premises a one story theatre building, with a seating capacity of five hundred (500) seats, substantially in accordance with the plans and specifications, to be prepared by Doe & Roe, architects; and to cause said building to be completed, substantially in accordance with said plans and specifications, as speedily as possible after the approval of such plans and specifications by all the departments of the City of New York, having authority in the premises, delays by strikes, lockouts, acts beyond the control of the Landlord, and coercion, by material men and labor organizations, excepted.

No. 211.

Covenant by landlord to give notice by registered mail.⁸

In case it shall be necessary for the Landlord to give notice of any kind to the Tenant, the same shall be given, and shall be complete, by sending such notice to the Tenant by United States registered mail, addressed to the Tenant, at the demised premises.

No. 212.

Covenant by landlord of quiet enjoyment.⁹

If the Tenant shall pay the rent as herein provided, and shall perform all the covenants of this lease by said Tenant to be performed, the Tenant shall, and may, peaceably and quietly have, hold and enjoy the said demised premises, for the term aforesaid.

⁷ Adapted from *Seidlitz v. Auerbach* (1920), 230 N. Y. 167, 219 N. E. 461.

⁸ *Cf. Rosenthal v. Walker* (1884), 111 U. S. 185, 4 Sup. Ct. Rep. 382, 28 Law ed. 395.

⁹ *Cf. Fifth Avenue Building Co. v. Kernochan* (1917), 221 N. Y. 370, 117 N. E. 579.

No. 213.**Covenant by landlord to repair, in case of fire.¹⁰**

The Tenant shall, in case of fire, give immediate notice thereof to the Landlord. If the premises shall be partially damaged by fire, the same shall be repaired, at the Landlord's expense, as speedily as practicable, due allowance being made for the time taken for the settlement of fire insurance claims and otherwise, but the rent hereunder shall not cease. If, however, the damage shall be so extensive as to render the premises entirely untenable, the rent thereafter shall cease, until such time as the demised premises shall be tenantable. In the event of the total destruction of the building, including the demised premises, by fire, or otherwise, or in case the same shall be so damaged, or injured, by fire that the Landlord shall deem it necessary to rebuild the same, then the rent shall be paid up to the time of such destruction, and then and from thenceforth this lease shall cease and come to an end. In no contingency, however, shall the provisions of this clause apply, or become effective, in case the fire shall be caused by the carelessness, negligence, or improper conduct, of the Tenant, or his agents, or servants, but, in such case, the Tenant shall be liable for the full amount of rent herein reserved, and, in addition thereto, for all damages, which may be suffered by the Landlord thereby.

No. 214.**Covenant by landlord to supply elevator service.¹¹**

The Landlord agrees to supply elevator service, at all reasonable times between the hours of eight in the morning and seven in the evening of each day, during said term, except Sundays and legal holidays, but the Landlord shall not be liable for any failure to do so, occasioned by accident, or any cause beyond his control.

¹⁰ Cf. *Witty v. Matthews* (1873), 52 N. Y. 512.

¹¹ Adapted from *Hayden Co. v. Kehoe* (1917), 177 App. Div. 734, 164 N. Y. Supp. 686.

No. 215.**Covenant by landlord to supply elevator service and steam heat.¹²**

The said Lessor shall use due diligence in operating the elevators and in furnishing steam for heating the premises hereby demised, during the usual business hours, including Sundays and holidays; but the Landlord shall not be responsible for interrupted elevator service, or steam supply, or for any claim arising, in consequence of the use thereof.

No. 216.**Same—another form.¹³**

It is understood and agreed that, where the Landlord furnishes elevators and steam heat, that the same are furnished free and gratuitously by the Landlord, and are no part of the consideration for the rent; and, if it should become necessary, or desirable, to stop any of the machinery, apparatus and appliances in said building, by reason of accident, or for the purpose of repair, alteration, or improvement, the Landlord shall have the right to discontinue the service, so long as he deems necessary, or desirable, and no claim for compensation, or damages, shall be made by the Tenant, and the Tenant hereby waives all claims for compensation and damages by reason thereof, or by reason of inconvenience arising from any such interruption of such service.

No. 217.**Covenant by landlord that title to lighting fixtures shall remain in tenant.¹⁴**

That all electric light fixtures and wiring thereto appertaining, which may now, or hereafter, be installed in the apartment by the Tenant, shall continue to be the property of the Tenant, and may be removed by the Tenant, at the expiration, or other termination, of this lease.

¹² Adapted from *Ferguson v. Zenker* (1918), 172 N. Y. Supp. 127.

¹³ *Cf. Lawrence v. Katcher* (1909), 117 N. Y. Supp. 876.

¹⁴ *Cf. Smith v. Bay State Savings Bank* (1909), 202 Mass. 482, 88 N. E. 1086.

(B).—Options Reserved by Landlord.

No. 218.

Option permitting landlord to elect to renew lease, or, in default thereof, to purchase building erected by tenant, at a price to be fixed by arbitration.¹⁵

It is hereby mutually covenanted and agreed by the parties hereto that, at the expiration of said term, the first party, its successors, or assigns, shall and will either pay, or cause to be paid, to the said second party, his executors, administrators, or assigns, the just and full value, at the time, of the building so erected on the said lot, which shall be ascertained in the manner hereinafter mentioned, or grant a new lease of the said lot to the second party, his executors, administrators and assigns, for a further term of twenty-one (21) years, which lease, if the first party shall elect to grant the same, shall contain the like covenants, conditions and agreements, except in respect of a further renewal of the said term, as are hereinbefore contained, and shall be for a further term of twenty-one (21) years, from and after the expiration of the term hereby granted, and at a yearly rent, which shall be ascertained as hereinafter mentioned, and shall, also, contain a provision either for the payment by the first party, its successors, or assigns, of the full value of the building so erected, as aforesaid, which may be on the said demised premises, at the expiration thereof, to be ascertained as hereinafter mentioned, or for giving a new lease of the demised premises to the second party, his executors, administrators or assigns, for the further term of twenty-one (21) years, at a rent to be ascertained as hereinafter provided for, and containing the covenants of the above recited lease.

And, in order to ascertain the value of the building erected on the said demised premises as aforesaid, or what augmentation of rent, if any, should take place, in case of granting any such new lease, it is further mutually agreed by the parties hereto that, in each and every of the cases above specified, in which it shall be necessary to ascertain a sum, which the said first party, its successors, or assigns, ought to pay to the second party, his executors, administrators or

¹⁵ Adapted from *Trustees & Associates of Brooklyn Benev. Soc. v. Connell* (1917), 179 App. Div. 821, 167 N. Y. Supp. 48.

assigns, in respect of the value of the building above mentioned, or the amount of rent, which ought to be reserved and made payable on any such new lease of the hereby demised premises, as is above mentioned, the value of such building and the amount of rent shall be ascertained and determined, as follows, that is to say:

That the first party, its successors, or assigns, shall nominate one fit and impartial person, and the second party, his executors, administrators or assigns, shall nominate one other fit and impartial person, to value such building in its then actual condition, and, also, to determine what would be a reasonable yearly rent for the said lot of land, during the next ensuing term of twenty-one (21) years, which nomination shall be made and signified by each party to the other, at least three (3) months before the expiration of the then current term; and, in default of such nomination by either party, for the space of fifteen (15) days, after notice shall have been given by the other party of the time above limited for the making of the same, the person who shall have been so nominated by the other party shall appoint, and associate with himself, one other fit and impartial person for the purpose aforesaid, and, if the two persons to be so nominated and appointed, or appointed and associated, shall differ in judgment as to either of the said subjects, they shall appoint a fit and impartial person to be umpire between them, if they can agree on such person; or, if they cannot so agree, then each of them shall nominate two fit and impartial persons, and, from the names of the four persons so nominated, one of them shall be drawn by ballot, who shall be such umpire; and the decision of such two persons, or, in case of their disagreement, of the said umpire, whether as to the value of the said building or as to the amount of such rent, shall, in all cases, be final and conclusive; and, in every such case of renewal, the rent to be reserved thereon shall be estimated for the lot alone, without making any addition for, or on account of, the building erected as aforesaid, and shall be estimated by the parties so chosen, at a percentage of five (5%) per cent per annum on the value of the lot, when such appraisalment or valuation is made, which shall constitute the yearly rent reserved, at each respective renewal of the several terms hereinbefore mentioned.

No. 219.

Option permitting landlord to purchase buildings, which may be erected by tenant, and, in default thereof, permitting tenant to purchase the plot, upon appraised valuation.¹⁶

The said parties, for themselves, and their legal representatives, mutually covenant and agree that, provided the second party and his legal representatives shall observe, keep and perform all the covenants and agreements hereinbefore, or hereinafter, contained, on his part to be kept and performed, and if there shall be standing on said demised premises, at the expiration of the term of this lease, any building, or buildings, which the second party shall have erected on said demised premises, then, and in such case, each of the said parties, or their legal representatives, during the ten (10) days immediately preceding three (3) months before the expiration of the term hereby granted, shall choose one disinterested reputable freeholder of the City of New York, and the two thus chosen shall select a third person, who shall, also, be a disinterested and reputable freeholder in said city; and the persons, thus chosen and selected, first being duly sworn, or affirmed, for such purpose, shall value and appraise the fee simple value of the said lots of land, exclusive of the building, or buildings, standing thereon, and shall, also, value and appraise the building, or buildings, standing on said lots, which said valuation and appraisal by the said appraisers, or any two of them, shall be reduced to writing and signed in duplicate by them, or any two of them; and one copy thereof shall be delivered to each of the said parties, or their legal representatives, within thirty (30) days after the appointment of said appraisers.

And the said parties further agree that the first party, her legal representatives, or assigns, may elect to purchase said building, if there shall be only one, or, if there shall be more than one, all of said buildings, at the said valuation, and in case the first party, her legal representatives or assigns shall elect so to do, the first party, her legal representatives, or assigns, shall pay to the second party, or his legal representatives, or his assigns, the amount of such valuation thirty (30) days before the expiration of the term hereinbefore granted, provided that said building, or buildings, shall

¹⁶ Adapted from *Bay v. O'Brien* (1917), 220 N. Y. 718, 116 N. E. 1085.

then be in the same order and condition as when valued as aforesaid; and if the first party, or her legal representatives, or her assigns, shall not so purchase said building, or buildings, the first party, her legal representatives, or assigns, shall convey the said premises to the second party, his legal representatives, or assigns, upon payment by the second party, his legal representatives, or assigns, before the expiration of the term hereby granted, of the appraised value of the lots, exclusive of the buildings, as determined by such appraisal.

It is further agreed that, if the first party shall not elect to purchase the said building, or buildings, and if the second party shall not elect to purchase said lots, before the expiration of the term hereby granted, then the premises above described, and all buildings, and improvements thereon erected, shall revert to the first party, free from any claim, or demand, whatsoever on the part of the second party.

No. 220.

Option permitting landlord to terminate, in event authorities order alterations to building.¹⁷

It is further agreed that, if any of the municipal, or state authorities, shall issue any order, or orders, requiring alterations in the building, of which the premises demised are a part, then, and in such event, the Landlord may cancel, or terminate, this lease, at any time, by giving to the Tenant at least sixty (60) days' notice in writing of the election so to terminate the same, and, in such event, this lease shall terminate on the day appointed by such written notice.

No. 221.

Option permitting landlord to terminate lease, upon breach by tenant.¹⁸

If the Tenant shall commit a breach of, or shall fail in the performance of, any covenants, conditions, provisions or terms contained in this lease, the Landlord may terminate and end this lease, and the term and estate hereby granted, and all rights and interest

¹⁷ Cf. *Abel v. Wuesten* (1911), 141 Ky. 512, 133 S. W. 774, Ann. Cas. 1912 C. 389.

¹⁸ Cf. *Patton v. Bond* (1879), 50 Iowa, 508; *Jackson v. Brownson* (1810), 7 Johns. (N. Y.) 227, 5 Am. Dec. 258.

hereunder, by giving to the Tenant five (5) days' written notice of the Landlord's election to terminate this lease; and, at the expiration of the five (5) days specified in said notice, this lease, and the term and estate hereby granted, and all right and interest of the Tenant thereunder, shall cease, end and expire; but nothing contained herein shall affect the Landlord's right to maintain summary proceedings for the non-payment of rent, as provided by statute, or to proceed against the Tenant, as otherwise provided in this lease.

No. 222.

Option permitting landlord to terminate lease, upon insolvency of tenant.¹⁹

In case the Lessee, during the term of this lease, shall file a voluntary petition in bankruptcy, or shall make an assignment for the benefit of creditors, or shall be adjudicated a bankrupt, the Lessor shall have the right to terminate and end this lease, by serving upon the Lessee five (5) days' notice to that effect, and, upon the expiration of said five (5) days after the service of said notice, the term of this lease shall thereupon cease, terminate and end, in the same manner, and to the same effect, as though that were the expiration of the original term; and the Lessor shall have the right to remove all persons, and all goods, and chattels, therefrom, by summary, or other legal, proceedings, force, or otherwise, without liability for damages.

No. 223.

Option granted to landlord to terminate lease, upon notice and payment of stipulated amount.²⁰

The Landlord reserves the right to terminate this lease, on May 1, 1923, or on May 1, 1924, by giving the Tenant three (3) months' previous notice in writing to such effect; and the Tenant agrees, upon receiving such notice, to surrender and yield up said demised premises to the Landlord, at the time mentioned in such notice, and to pay the rent up to the time of the surrender of the

¹⁹ Cf. *Witthaus v. Zimmerman* (1904), 91 App. Div. 202, 86 N. Y. Supp. 314, 14 N. Y. Anno. Cas. 379.

²⁰ Adapted from *Henig v. Palmer* (1919), 189 App. Div. 938, 178 N. Y. Supp. 894.

premises. If this lease shall be so terminated on May 1, 1923, the Landlord shall pay to the Tenant the sum of six hundred (\$600) dollars, or, if it shall be so terminated on May 1, 1924, the Landlord shall pay to the Tenant the sum of five hundred (\$500) dollars, upon the surrender of the premises.

No. 224.

Option permitting landlord to terminate lease, upon sale of premises.²¹

The Landlord hereby reserves the right to terminate this lease, and the term thereof, at any time after May 1, 1923, in case of a *bona fide* sale of the property, upon giving ninety (90) days' notice in writing to the Tenant, mailed to the Tenant, at the demised premises, of his intention so to terminate the same; and this lease, and the term thereof, shall cease, determine and end, at the expiration of ninety (90) days from the day when such notice shall have been mailed. And thereafter the Landlord may re-enter upon, and take possession of, the demised premises, and every part thereof, either by force, or otherwise, without being liable to prosecution, or damages, therefor, and have and enjoy the said premises as of their former estate, free, clear and discharged of this lease, and of all rights of the Tenant hereunder. But, in the event of the cancellation of this lease, in the manner hereinbefore provided, the Landlord shall pay the sum of five thousand (\$5,000) dollars, as consideration for the surrender of the said premises.

No. 225.

Same—another form.²²

It is further agreed by the parties hereto that this lease may be terminated, at any time, by the Landlord, or his executors, administrators, or assigns, by giving three (3) months' prior notice in writing of the intent to terminate the same, served personally on the Tenant, or on his assignee, by leaving the same affixed to the premises, and, at the expiration of said three (3) months' notice,

²¹ Adapted from *Madison Ave. Realty Co. Inc. v. Martin* (1921), 114 Misc. 315, 187 N. Y. Supp. 318.

²² Adapted from *A. Z. A. Realty Corporation v. Harrigan Cafe, Inc.* (1920), 113 Misc. 141, 185 N. Y. Supp. 212.

this lease, and the term thereof, shall cease and determine; and, thereupon, the Landlord shall pay to the Tenant the sum of fifteen thousand (\$15,000) dollars, minus any sum, or sums, due to the said Landlord for rent, taxes, water rents or otherwise, growing out of this lease.

No. 226.

Same—another form.²³

In the event of a contemplated sale of said premises, during the demised term, the Landlord shall, at least ten (10) days before such contemplated sale, send to the Tenant, by registered mail, addressed to the Tenant, at the said premises, a notice in writing, stating the substance of the terms on which such sale is proposed to be made; and, thereupon, within ten days from the date of the mailing of said notice, the Tenant shall have the right to purchase the said premises, upon the terms and conditions proposed, and, on failure of the Tenant to exercise such option, within the time aforesaid, the option hereby granted to the Tenant shall be and stand cancelled.

No. 227.

Same—another form.²⁴

That the Landlord, and its assigns, in case of a sale, shall have the option, or privilege, of terminating this lease on the first day of any month, during the term hereby demised; and the Tenant, on receiving notice, by registered mail, or otherwise, from the Landlord, or its assigns, of the exercise of such option, or privilege, to terminate this lease, shall quit and surrender possession of said demised premises to the said Landlord, or its assigns, on the first day of the month next ensuing such notice.

²³ Adapted from *New Atlantic Garden, Inc. v. Atlantic Garden Realty Corp.* (1922), 201 App. Div. 414, 194 N. Y. Supp. 34.

²⁴ Adapted from *Lusonray Holding Co., Inc. v. McCastline* (1920), 192 App. Div. 156, 182 N. Y. Supp. 156.

No. 228.**Same—another form.²⁵**

The Landlord shall have the privilege of terminating the within lease, at any time, in the event of a sale of the premises, by giving sixty (60) days' previous written notice thereof to the Tenant.

(C).—Covenants by Tenant.**No. 229.****Covenant authorizing landlord to make alterations.²⁶**

The Tenant further covenants and agrees that, if the Landlord shall be required to make any changes of any kind, or nature, to the building, or to the sidewalks, or any part thereof, whatsoever the same may be, the Tenant will permit the Landlord to make any such changes, alterations or additions, in accordance with law, and further agrees that the Landlord shall be permitted, at any time, to change, alter, or remove, the entrance to, or the halls in, the building, as the Landlord may desire (without any claim against the Landlord for damages, and without any reduction for rent), provided that ingress and egress shall be provided, during any such alteration, and further agrees that the Landlord, the Landlord's agents, or servants, may, at any time, enter said premises, for the purpose of making repairs, or alterations, either to the interior of the building, or any part thereof, or to the pavements, gutters, or curbstones, as the said Landlord may deem advisable, or for the purpose of additional security to the building, or to enlarge the vaults connected with the premises, or to make such other alterations to the sewer and sewer connections, water pipe connections, as the Landlord may deem advisable, and the said Tenant agrees not to offer any obstruction, or hindrances, to such alterations, additions, or improvements, but to aid and assist in the same, nor to demand any compensation for damage, annoyance, or injury, caused thereby under the plea, real or alleged, of damages; nor to claim any deduction of rent in consequence thereof, in any manner whatsoever.

²⁵ Adapted from *Payne v. Brathwaite* (1920), 113 Misc. 517, 185 N. Y. Supp. 107.

²⁶ Cf. *Smith v. Kerr* (1888), 108 N. Y. 31, 15 N. E. 70, 2 Am. St. Rep. 362.

No. 230.**Covenant authorizing landlord to remove encroachments.²⁷**

It is further agreed that, whereas the show-windows, or some other portion of the premises adjacent to the premises demised by this lease, may, at present, project beyond the building line, and, therefore, encroach on city property; and whereas, there may have been, in the past, or may be, in the future, an ordinance, or order, passed, or issued, by the municipal authorities, directing the removal of any such encroachment as may exist beyond the building line, it is understood that this lease is signed with full knowledge by the Tenant of the existence of such encroachments; and it is further understood and agreed that, should said ordinance, or order, become effective, that the Landlord may, at the Landlord's own cost and expense, remove the show-windows from their present location, if such be the case, to the building line, and, in the event of any other encroachments existing, that the Landlord may remove such encroachments, or fill up the space occupied by such encroachments; and the Tenant shall not make any claim for damages, or reduction in rent, owing to the said show-windows being removed, or the said encroachments being removed, or filled up. But, if it shall become necessary or desirable for the Landlord to make any of the changes above referred to, the Tenant shall protect the Tenant's goods and chattels, in such a manner as to hold the Landlord free and harmless from any claim for damages to the Tenant's goods and chattels, or to the Tenant's business.

No. 231.**Covenant authorizing landlord to repair, at tenant's expense, upon his default.²⁸**

If the Lessee shall fail to promptly execute and comply with any of the laws, rules, orders, ordinances, requirements, or regulations, of any of the authorities, departments, boards, or bodies, hereinbefore mentioned, or to make the repairs necessary to keep the said premises in good repair, then, and in any such event, the Lessor

²⁷ Cf. *Smith v. Kerr* (1888), 108 N. Y. 31, 15 N. E. 70, 2 Am. St. Rep. 362.

²⁸ Cf. *Knepper v. Rothbaum* (1918), 104 Misc. 554, 172 N. Y. Supp. 109.

shall have the right to execute and comply with such laws, rules, orders, ordinances, requirements, and regulations, and to make such repairs, at the Lessor's own cost and expense, and such cost and expense shall be added to, and become, and be, a part of, the rent, herein provided to be paid by the Lessee, then, or next to become, due.

No. 232.

Covenant by tenant to alter building into garage.²⁹

That the said Landlord has let unto the said Tenant and the said Tenant has hired from said Landlord, premises known as No. 307½ East 15th Street, Borough of Manhattan, New York City, to be conducted as a garage, also for the sale of automobiles and automobile supplies and accessories, including any supplies pertaining to the automobile business permitted by law.

That this lease is given upon the express condition that the Tenant, at its own cost and expense, shall forthwith proceed to make the necessary alterations and change the nature of the premises herein described, from a stable into a garage, which shall be completed on or before May 5, 1923, and which garage shall be in strict compliance with the laws governing the same in any and all departments of the city and state of New York.

No. 233.

Covenant by tenant that alterations, etc., shall belong to landlord.³⁰

That all alterations, additions, or improvements, which may be made by either of the parties hereto, upon the premises, except movable office furniture put in at the expense of the Tenant, shall be the property of the Landlord, and shall remain upon, and be surrendered with, the premises as a part thereof, at the termination of this lease, without hindrance, molestation, or injury.

²⁹ Adapted from *Kanter v. New Amsterdam Casualty Co.* (1921), 233 N. Y. 602, 135 N. E. 935.

³⁰ Adapted from *Century Holding Co. v. Pathe Exchange, Inc.* (1922), 200 App. Div. 62, 192 N. Y. Supp. 380.

No. 234.**Covenant by tenant to comply with orders of governmental departments.³¹**

The Tenant further covenants and agrees to comply with and execute, at its own expense, all lawful orders and regulations of the board of health, police department and city corporation, relating to said premises.

No. 235.**Same—another form.³²**

The Tenant, at his own cost and expense, shall promptly comply with each, every and all laws, orders, regulations and notices made by, or pursuant to, any federal, state, county, or municipal, or other lawful, authority, in, upon, appertaining to, or affecting, the said demised premises, or their appurtenances, and shall pay all fines and penalties incurred by the said demised premises, or by the Landlord, or the Tenant, which may be imposed, by reason of any failure, actual or alleged, on either of their parts, thus promptly to comply with and execute the same.

No. 236.**Covenant by tenant to continue liable, after summary proceedings or abandonment of premises.³³**

If the Tenant shall be dispossessed, by the issuance or service of any warrant, or final order, in summary proceedings, or if the Tenant shall abandon the premises, the Tenant shall, nevertheless, continue liable for the payment of the rent and the performance of all the other conditions herein contained.

³¹ Adapted from *Frank v. Sidney B. Bowman Automobile Co.* (1922), 233 N. Y. 584, 135 N. E. 928.

³² Adapted from *Cohen v. Margolies* (1922), 232 N. Y. 584, 134 N. E. 581.

³³ Adapted from *Mann v. Ferdinand Munch Brewing Co.* (1919), 225 N. Y. 189, 121 N. E. 746.

No. 237.**Covenant by tenant to deposit security.³⁴**

The Tenant has this day deposited with the Landlord, the sum of two thousand (\$2,000) dollars, the receipt whereof is hereby acknowledged by the Landlord, as collateral security for the payment of the rents to grow due to it from him under this lease, and for the faithful performance by him of all the other obligations hereunder, and the payment of any and all sums of money for which he may be, or become, liable, hereunder.

No. 238.**Covenant by tenant to discharge mechanic's liens.³⁵**

If any mechanic's lien, or liens, shall be filed against the demised premises for work done, or materials furnished to the Tenant, the Tenant shall, within ten (10) days thereafter, at his own expense, cause such lien, or liens, to be discharged, by filing the bond for that purpose required by law.

No. 239.**Covenant by tenant to execute further instruments.³⁶**

The Tenant agrees to execute and acknowledge any instrument, in writing, that the Landlord may desire, which, in a general way, shall be in accordance with the provisions of this lease. If the Tenant shall fail to do so, within five (5) days after notice, or demand, the Landlord shall have the right, should he so desire, to terminate this lease, on account of the Tenant's failure to perform this covenant.

³⁴ Adapted from *Markman v. 451-455 Grand St. Corp.* (1916), 168 N. Y. Supp. 522.

³⁵ *Cf. DeKlyn v. Gould* (1901), 165 N. Y. 282, 59 N. E. 95, 80 Am. St. Rep. 719.

³⁶ *Cf. Colby v. Osgood* (1859), 29 Barb. (N. Y.) 339.

No. 240.

Covenant by tenant to indemnify landlord against negligence.³⁷

The Tenant shall keep and hold harmless the Landlord from any and all damages and liability for anything and everything whatsoever, arising from, or out of, the occupancy by, or under, the Tenant, the Tenant's agents, or servants, and from any loss, or damage, arising from any fault, or negligence, by the Tenant, or failure on the Tenant's part to comply with any of the covenants, terms and conditions herein contained, or otherwise, or whether it be caused by, or be due to, the failure of the Landlord to perform any of the covenants herein, expressed or implied, which are to be performed by the Landlord.

No. 241.

Covenant by tenant authorizing landlord to insure plate glass, for tenant's account.³⁸

The Tenant hereby authorizes the Landlord, if the Landlord should so elect, to insure the plate glass for the Tenant's account, charging the premium for such insurance to the Tenant, who hereby agrees to pay the same, upon demand, and, in default of such payment, upon demand of the Landlord, the same shall be added to and be considered as part of the rent.

No. 242.

Covenant by tenant to obtain consent to changes in electrical equipment.³⁹

No change, alterations, or additions to the electrical equipment shall be made in the premises hereby leased, except upon the written permission, or authorization, of the Landlord.

³⁷ Cf. *Woodbury v. Post* (1893), 158 Mass. 140, 33 N. E. 86; *Gilbert v. Weman* (1848), 1 N. Y. 550, 49 Am. Dec. 359; *Moloney v. Nelson* (1893), 70 Hun. 202, 24 N. Y. Supp. 147.

³⁸ Cf. *Roesch v. Johnson* (1900), 69 Ark. 30, 62 S. W. 416.

³⁹ Cf. *Denechand v. Trisconi* (1874), 26 La. Ann. 402; *Kuneman v. Boisse* (1867), 17 La. Ann. 26.

No. 243.

Covenant by tenant to pay deficiency upon reletting, with waiver of notice of intention to re-enter.⁴⁰

In case of default in any of the covenants, the Landlord may resume possession of the premises, and relet the same, at the best rent that can be obtained, for the remainder of the term, for the account of the Tenant, who shall make good any deficiency; and any notice, in writing, of intention to re-enter, as provided for in the third section of an act entitled "An Act to Abolish Distress for Rent and other Purposes," passed May 13, 1846, is expressly waived.

No. 244.

Same—another form.⁴¹

If the said premises, or any part thereof, shall become vacant, during said term, the Landlord, or his representative, may re-enter the same, without being liable to prosecution therefor, and relet the said premises as the agent of said Tenant, and receive the rent thereof, applying the same, first, to the payment of such expenses as the Landlord may be put to in re-entering, and, then, to the payment of the rent due under this lease, the balance, if any, to be paid over to the Tenant, who shall remain liable for any deficiency.

No. 245.

Same—another form.⁴²

In the event that the Landlord shall obtain possession by re-entry, dispossess, summary proceedings, or otherwise, the Tenant shall pay to the Landlord the expenses incurred by the Landlord in obtaining possession of said premises, including legal expenses and attorneys' fees, and shall pay such other expenses as the Landlord shall have incurred in putting the premises in good order and

⁴⁰ Adapted from *Golick v. Thompson* (1917), 165 N. Y. Supp. 788.

⁴¹ *Cf. Michaels v. Furst* (1902), 169 N. Y. 381, 62 N. E. 425, 32 Civ. Proc. R. 310.

⁴² *Cf. Hall v. Gould* (1855), 13 N. Y. 127; *Lewis v. Stafford* (1898), 24 Misc. 717, 53 N. Y. Supp. 801.

condition, and shall, also, pay any other expense, or commissions, which shall be paid by the Landlord in and about the letting of the premises; and the Tenant further agrees to pay to the Landlord, each month, the difference between the amount of rent herein reserved, and the amount of rent, which shall be collected and received from the demised premises for such month, during the residue of the term herein provided remaining after the Landlord shall have taken possession of the premises; and the Landlord may sue for and enforce the collection of such amount, which may be due at the expiration of each month, and the Tenant expressly agrees that any such suit shall not be a bar, or prejudice, in any way, to the rights of the Landlord to enforce the collection of the amount due at the end of any other future month, by a like, or similar, action or proceeding. The overplus, if any, at the termination of the period herein provided for, shall be paid to the Tenant, unless, within a period of six (6) months from the termination of this lease, as aforesaid, the Landlord shall, by notice in writing, release the Tenant from any and all liability whatsoever in this clause contained, which, it is agreed, the Landlord shall, at the Landlord's option, have the right to do; and, in such an event, it is agreed that the Landlord and the Tenant shall have no further rights and liabilities hereunder.

No. 246.

Covenant by tenant to pay increase in price of coal.⁴³

It is mutually understood and agreed that the rent herein specified is predicated upon the Landlord's ability to obtain coal at a price not exceeding twenty-five (25%) per cent over the April, 1923, quotations of six (\$6) dollars per ton for pea coal, six and one-half (\$6.50) dollars per ton for egg and broken coal, and seven (\$7) dollars per ton for nut and stove coal, and, in the event that the Landlord shall not be able to buy coal, except at a price in excess thereof, the Tenant shall pay to the Landlord, during such period as the price of coal is in excess of the amount stipulated above, his proportionate share of said excess amount, which amount shall be calculated, as follows: The excess cost shall be fixed, by deducting the amount, which coal would cost at its highest point

⁴³ Adapted from *Clause Recommended to Association of Property Owners*.

(as above specified) from the amount actually paid out for each monthly period, when steam is on, and dividing said excess cost equally among the Tenants each month, which amount shall then be added to the monthly rent then next due, be deemed rent, and be collectible as such.

No. 247.

Covenant by tenant to pay increase in insurance premiums.⁴⁴

The Tenant shall, on demand, pay, as part of the rent, any increase of premium for the insurance of the building, or premises, or any part above the least hazardous rate, for the business mentioned herein, which may be imposed in consequence of the use or occupation of the Tenant, or which may be due, in any way, directly or indirectly, to the said use and occupation of the premises by the Tenant.

No. 248.

Covenant by tenant to pay real estate taxes and other assessments.⁴⁵

That the Tenant shall, and will, pay and discharge, when due and payable, or within sixty (60) days thereafter, all and every tax and taxes, Croton water, or other water, rates, charges for placing, replacing, or repairing, water meters upon said premises, rents, charges, assessments, duties and other impositions whatsoever, as well ordinary as extraordinary, which shall be assessed, levied, or imposed, upon the said premises, or any part thereof, by any government, power, or authority whatsoever, during the said term, except that the Landlord covenants and agrees to pay all taxes, assessments, or other charges, which may become a lien and charge on said premises in the year 1923.

No. 249.

Covenant by tenant to pay increase in real estate taxes.⁴⁶

The Tenant shall pay, as rent, six (6%) per cent of the increase in the amount of real estate taxes, over and above the sum of three

⁴⁴ Cf. *Noel v. H. Bencke Lith. Co.* (1890), 58 N. Y. Super. Ct. 587, 11 N. Y. Supp. 589, aff'd. (1892), 134 N. Y. 617, 32 N. E. 649.

⁴⁵ Adapted from *Wall v. Hess* (1922), 232 N. Y. 472, 134 N. E. 536.

⁴⁶ Cf. *Lehmaier v. Jones* (1905), 100 App. Div. 495, 91 N. Y. Supp. 687.

thousand (\$3,000) dollars, which may be imposed upon the land and building, known on the Tax Map of the Borough of Manhattan, City of New York, as Lot No. 10, Block No. 235A, of which the demised premises are a part, in any and every year, during the period of this lease. Such amount shall be paid within five (5) days after it shall have been demanded by the Landlord, and it shall be collectible as rent. A tax bill shall be sufficient evidence of the amount of the real estate taxes so imposed, and for the calculation of the amount to be paid by the Tenant.

No. 250.

Covenant by tenant to pay the rent as stipulated.⁴⁷

The Tenant shall pay to the Landlord the rent herein reserved, on the days and in the manner herein provided, except that the rent for the first month shall be paid at the time of the signing of this lease.

No. 251.

Covenant by tenant to pay, as rent, expenditures incurred by landlord, because of tenant's failure to perform.⁴⁸

In case the Landlord shall pay, or be compelled to pay, a sum of money, or to do any act which requires the payment of any money, by reason of the failure of the Tenant to perform one or more of the covenants herein contained to be kept and performed by the Tenant, then and in such event the sum or sums so paid by the Landlord, together with all interest, costs and damages, shall be considered as additional rent, and shall be added to the rent next becoming due in the month succeeding such payment, and shall be collectible in the same manner, and with the same remedies, as if they had been rents originally reserved, or additional rents as herein specifically defined.

⁴⁷ Cf. *Smith v. Barber* (1906), 112 App. Div. 187, 98 N. Y. Supp. 317.

⁴⁸ Adapted from *Cuyler Realty Co. v. Teneo Co. Inc.* (1921), 196 App. Div. 440, 188 N. Y. Supp. 340.

No. 252.

Covenant by tenant to pay for repairs, as part of rent.⁴⁹

The Tenant shall, and will, keep the inside of said premises in good order and repair, during the term aforesaid, and, upon failure so to do, the Landlord shall have the right to give notice in writing to the Tenant, to be mailed to the Tenant by registered mail, addressed to the demised premises, specifying the repairs, which the Tenant may have failed to make, and, in the event that the Tenant shall have failed to make the same, within thirty (30) days from the date of the mailing of such notice, the Landlord shall have the right to make such repairs and to add the amount of the cost thereof to the rent due hereunder on the 1st day of the month following the date of the repairs; and the cost of such repairs shall be, and constitute, such rent, together with the rent above provided for.

No. 253.

Covenant by tenant to pay water charges.⁵⁰

The Tenant agrees to pay the annual Croton water, or meter, charges, during the term demised, which are, or may be, assessed, or imposed, upon, or grow due and payable out of, or for, the demised premises.

No. 254.

Same—another form.⁵¹

The Tenant shall pay the annual Croton water, or meter charges, which, during the term hereby demised, shall, or may be assessed, or imposed upon, or grow due and payable out of, or for, the demised premises; and, if the same shall not be provided for by separate water meter, the Landlord may, at any time during the term hereof, install a meter; or, upon demand of the Landlord, the Tenant shall pay fifteen (15%) per cent of the Croton water charge on the entire premises of which the premises hereby demised

⁴⁹ Adapted from *Knepper v. Rothbaum* (1918), 104 Misc. 554, 172 N. Y. Supp. 109.

⁵⁰ Cf. *Lehmaier v. Jones* (1905), 100 App. Div. 495, 91 N. Y. Supp. 687.

⁵¹ Cf. *N. Y. University v. American Book Co.* (1910), 197 N. Y. 294, 90 N. E. 819.

are a part, and the Tenant shall pay such amount to the Landlord, as additional rent, within five (5) days after the Tenant shall have been notified of the amount thereof by the Landlord, and it shall be collectible, accordingly, as rent. A water bill shall be sufficient evidence of the amount of water charges, and for calculation of the amount to be paid by the Tenant.

No. 255.

Same—another form.⁵²

The Lessee agrees to pay, when assessed and due, fifteen (15%) per cent of all water rates, and other charges for the supply of water, imposed, taxed, or charged, according to law, on said building, during the term of this lease, and, if not so paid, the same, together with all interest and penalties thereon, shall be added to, and become, and be a part of, the rent then due, or next to become due.

No. 256.

Covenant by tenant to permit landlord to enter for inspection or repairs.⁵³

The Tenant shall permit the said Landlord, or its agents, to enter the said premises, at reasonable hours, to examine the same, or to make such repairs and alterations therein as shall be necessary for the safety and preservation thereof.

No. 257.

Covenant by tenant to remove snow and ice.⁵⁴

The Tenant shall remove all snow and ice from the sidewalk in front of the premises hereby leased, within four (4) hours after snow shall have ceased to fall or ice shall have formed.

⁵² Cf. *Lowenthal v. Michels* (1908), 59 Misc. 195, 110 N. Y. Supp. 639.

⁵³ Adapted from *Harperley Hall Co. v. Joseph* (1921), 187 N. Y. Supp. 120.

⁵⁴ Cf. *Clifford v. Atlantic Cotton Mills* (1888), 146 Mass. 47, 15 N. E. 84, 4 Am. St. Rep. 279; *City of Rochester v. Campbell* (1890), 123 N. Y. 405, 25 N. E. 937, 20 Am. St. Rep. 760, 10 L. R. A. 393; *Harkin v. Crumie* (1897), 20 Misc. 568, 46 N. Y. Supp. 453.

No. 258.**Covenant by tenant to replace damaged plate glass.⁵⁵**

If any of the plate glass in the demised premises shall be damaged or broken, whether because of the carelessness of the Tenant, or otherwise, the Tenant shall replace the same, at his own cost and expense.

No. 259.**Covenant by tenant to vacate, upon sale and notice.⁵⁶**

Should the said premises be sold, the Tenant agrees to vacate the same, at any time, on thirty (30) days' notice.

No. 260.**Covenant by tenant to vacate such portions of a farm as lessor may sell.⁵⁷**

The Lessor may, from time to time, sell any portion of the premises hereby leased, and, at the time of each and any such sale, the Lessee agrees to vacate such portion, or portions thereof, and shall not claim, or be entitled to receive, any compensation for crops, or otherwise; but, in the event of any sale, or sales, of any portion of the premises hereby leased, the monthly rent herein provided for shall be reduced for the unexpired term by an amount equivalent to five (5%) per cent of the sale price of such portion, or portions, of said premises.

No. 261.**Covenant by tenant to waive negligence of landlord.⁵⁸**

In consideration of the reduced rental at which the above described premises are let, it is agreed that the Landlord shall not be liable for any damage, or injury, which may be sustained by the

⁵⁵ *Cf. Cohen v. Hill* (1894), 9 Misc. 326, 30 N. Y. Supp. 209.

⁵⁶ Adapted from *Weinman v. Trainor* (1921), 114 Misc. 403, 136 N. Y. Supp. 587.

⁵⁷ Adapted from *Pratt v. Prentice* (1917), 221 N. Y. 707, 117 N. E. 1082.

⁵⁸ *Cf. Levin v. Habicht* (1904), 45 Misc. 381, 90 N. Y. Supp. 349.

Tenant, or any other person, or their goods and chattels, whether by reason of leakage, obstruction, or other defect, of the water pipes, gas pipes, soil pipes, or other leakage in, or about, said premises, or in, or from, any other part of the building of which the demised premises are a part, or the condition of said premises, or any part thereof, or by, or through, the elevator, if any, or from any other cause whatsoever, whether the said damage, or injury, should be caused by or be due to the negligence of the Landlord, his agents, servants or employees, or not.

No. 262.

Covenant by tenant waiving right to redeem premises.⁵⁹

In the event that summary proceedings, or any other proceedings, shall be begun by the Landlord, and result in the Tenant being removed, or dispossessed, from the possession of the demised premises, such proceedings shall terminate this lease, and all rights of the Tenant hereunder; and the Tenant shall not have the right to redeem and re-obtain possession of said premises, by payment of past debts and obligations, or in any other way, all of which rights, as provided by Section 1437 of the Civil Practice Act, and all other sections and provisions therein contained, being hereby expressly released, waived and surrendered by the Tenant.

No. 263.

Covenant by tenant not to claim award in condemnation proceedings.⁶⁰

In the event the said premises, or any part thereof, shall be taken and condemned for public purposes, by the proper authorities, then the Tenant shall have no claim against the Landlord and shall not have any claim, or right to claim, or be entitled to any portion of the amount that may be awarded as damages or paid as a result of such proceedings, and all rights to damages, if any, of the Tenant are hereby assigned to the Landlord.

⁵⁹ Cf. *Witbeck v. Van Rennselaer* (1876), 64 N. Y. 27.

⁶⁰ Cf. *Matter of City of New York* (1908), 193 N. Y. 117, 85 N. E. 1064; *Phyfe v. Eimer* (1871), 45 N. Y. 102.

No. 264.**Covenant by tenant not to place signs, without landlord's consent.⁶¹**

The Tenant shall place no sign on the outside of said premises, or on the sidewalk in front of the same, unless and until the size, style, location and character shall have been first approved in writing by the Landlord; and the Landlord shall have the right to enter the premises, without notifying the Tenant, and to remove at the expense of the Tenant, and to store, at the expense of the Tenant, any sign, or signs, that may be placed on the outside of the premises, or on the sidewalk in front of the same, without the written consent of the Landlord.

No. 265.**Covenant by tenant not to post advertisements, notices or signs.⁶²**

No advertisement, notice, or sign, shall be placed, or affixed, on any of the windows or doors, or on any part of the outside, or inside, of said building, except such as shall have been first approved by the Landlord in writing endorsed hereon.

Exterior and interior signs on glass will be painted for the Tenant, at the Tenant's own expense, by the Landlord's regular sign painters, and no other sign painter shall be employed to do any such work.

(D).—Options Granted to Tenant.**No. 266.****Option permitting tenant to purchase premises at appraised value, to be determined by appraisers selected by the parties.⁶³**

At any time after the date of this lease, and at least one year before the expiration of the term hereinbefore named, the value

⁶¹ Cf. *Imperiale Building Co. v. John H. Woodbury Dermatological Institute* (1899), 29 Misc. 617, 61 N. Y. Supp. 129.

⁶² Cf. *Knoepfel v. Kings County Fire Ins. Co.* (1876), 66 N. Y. 639.

⁶³ Adapted from *Mutual Life Ins. Co. v. Stephens* (1915), 214 N. Y. 488, 108 N. E. 856.

of the demised premises, together with whatever improvements may then exist thereon, exclusive of any improvements thereon made by the second party, shall, if the second party so desires, be appraised by two appraisers, one of whom shall be appointed by the first party, and the other by the second party, with power to such appraisers to appoint a third appraiser, in case they cannot agree. All of such appraisers shall be owners in fee of neighboring property, and their appraisal shall be based, so far as possible, on actual sales.

The second party, for six (6) months after such appraisal shall have been made, and a copy thereof delivered to the second party, shall have the option of purchasing said premises, including all improvements thereon, whether made by the second party, or by any other person, in fee simple, free from encumbrances, at such appraised value; and the first party shall thereupon convey said premises to the second party, accordingly, and, in case the second party shall exercise such option to purchase said premises, this lease, notwithstanding anything hereinbefore contained, shall terminate upon the delivery of the deed to said premises. If the title to said premises should fail in part, the second party shall have the option to purchase any portion of the said premises, at the proportion of such appraised value, which the part thus acquired, bears.

No. 267.

Option permitting tenant to purchase premises.⁶⁴

The first party agrees to sell to the second party all the premises above described, for the sum of five thousand (\$5,000) dollars, at any time before the expiration of this lease.

No. 268.

Same—another form.⁶⁵

The Lessor agrees that, in the event of the Lessor's desire to sell the above mentioned property, before the expiration of this lease, the Lessee shall have the first option to purchase the same.

⁶⁴ Adapted from *Trumbull v. Bombard* (1919), 225 N. Y. 638, 121 N. E. 895.

⁶⁵ Adapted from *Jurgenson v. Morris* (1920), 194 App. Div. 92, 185 N. Y. Supp. 386.

No. 269.**Same—another form.⁶⁶**

It is further agreed that the Tenant shall have the first privilege of purchasing the premises herein described, at any time, during the term of this lease, for the sum of twenty-five thousand (\$25,000) dollars.

No. 270.**Option permitting tenant to renew lease.⁶⁷**

Should the Tenant elect to renew this lease, for a term of ten (10) years, then, and in that event, the Tenant shall, by notice in writing, notify the Landlord, his heirs, or assigns, at least ninety (90) days prior to the expiration of the term hereby created, of such intention to renew said lease.

(E).—Mutual Covenants.**No. 271.****Mutual covenant creating a lien for amount deposited.⁶⁸**

It is hereby mutually agreed that the seventy thousand (\$70,000) dollars deposited by the Tenant with the Landlord shall, until the expiration of this lease, become and remain a lien against the aforesaid property, with the same force and effect as if a mortgage upon such property had been executed to secure the repayment thereof; but said lien, however, shall be subordinate to a mortgage, or mortgages, aggregating four hundred thousand (\$400,000) dollars.

No. 272.**Mutual covenant limiting effect of particular waiver.⁶⁹**

The waiver by the Landlord of any breach of any covenant, or covenants, of this lease shall be limited to the particular instance,

⁶⁶ Adapted from *Sargent v. Vought* (1920), 194 App. Div. 807, 185 N. Y. Supp. 578.

⁶⁷ Adapted from *Orr v. Doubleday, Page & Co.* (1918), 223 N. Y. 334, 119 N. E. 522.

⁶⁸ Adapted from *Stimpson v. Minsker Realty Co.* (1917), 177 App. Div. 536, 164 N. Y. Supp. 465.

⁶⁹ *Cf. Ireland v. Nichols* (1871), 46 N. Y. 413.

and shall not operate, or be deemed, to waive any future breaches of said covenant, or covenants.

No. 273.

Same—another form.⁷⁰

The receipt of any rent, whether the same be that originally reserved, or that which may become payable under any covenant herein contained, or of any portion thereof, or of any interest thereon, shall not operate as a waiver of the right of the Landlord to enforce the payment of additional rent, or of any of the other obligations of this lease, by such remedies as may be appropriate.

No. 274.

Same—another form.⁷¹

The failure of the Landlord to enforce any covenant, or condition, by reason of its breach by the Tenant, shall not waive, or avoid, the right of the Landlord to enforce the same covenant or condition on the occasion of any subsequent breach or default.

No. 275.

Same—another form.⁷²

The receipt of rent by the Landlord from any assignee, subtenant, mortgagee, or successor in interest to any mortgagee, with full notice of any transfer, shall not waive, or avoid, the right of the Landlord, at any time hereafter, to elect to terminate this lease, on account of such assignment, subletting, mortgaging or transferring of this lease.

No. 276.

Same—another form.⁷³

The failure of the Lessor to insist, in any one instance, or more, upon the performance of any of the covenants, or conditions, of

⁷⁰ Cf. *Manice v. Millen* (1857), 26 Barb. (N. Y.) 41.

⁷¹ Cf. *Conger v. Duryee* (1882), 90 N. Y. 594.

⁷² Cf. *Jones v. Durrer* (1892), 96 Cal. 95, 30 Pac. 1027.

⁷³ Cf. *Murray v. Heinze* (1895), 17 Mont. 353, 42 Pac. 1057.

this lease, or to exercise any right, or privilege, herein conferred, shall not be construed as thereafter waiving, or relinquishing, any such covenants, conditions, rights, or privileges, but the same shall continue and remain in full force and effect.

No. 277.

Mutual covenant providing for automatic renewal, in absence of written notice to contrary.⁷⁴

This lease, and the term hereby created, shall be deemed to be, and shall be, renewed and extended for the further term of one (1) year from the expiration of the term hereby granted, unless either party, at least three (3) months prior to the termination hereof, shall give notice to the other, in writing, of an intention to surrender, or to take possession of, the premises, as the case may be, on the date fixed for the expiration of the term. The rent, during such extended term, or renewal, shall be at the same rate as the rate provided herein for the last year of the term hereby created, and such renewal and extension shall be upon all the terms, conditions and covenants herein contained, including this clause. Notice under this clause may be given by the Landlord to the Tenant, either personally, or by writing left upon the premises, or by letter addressed to the Tenant, at the demised premises. Notice by the Tenant to the Landlord must be given by sending the same, by registered mail, to the Landlord, addressed to 11½ Broadway, Borough of Manhattan, New York City, or by serving the same personally upon the Landlord, or upon the agent in charge of the building.

⁷⁴ Adapted from *U. S. Realty & Improvement Co. v. Ewing* (1918), 206 St. Rep. 214, 172 N. Y. Supp. 214.

CHAPTER XIII

LICENSOR AND LICENSEE

- No. 278—Agreement granting sole and exclusive right to manufacture and sell patented article, on a royalty basis.
- No. 279—Agreement granting license to use patented amusement device, which is renewable, at licensee's option.
- No. 280—Agreement granting sole and exclusive motion picture rights in book.
- No. 281—Agreement granting sole and exclusive right to publish book.
- No. 282—Agreement granting sole and exclusive right to translate and produce foreign play.
- No. 283—Agreement granting non-exclusive license with royalty—official form.
- No. 284—Shop-right license—official form.
- No. 285—Agreement whereunder refining company loans pump, tank and equipment to retailer for use only with the refining company's products.

No. 278.

Agreement granting sole and exclusive right to manufacture and sell patented article, on a royalty basis.¹

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Licensor"), and Richard Roe Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Licensee"), WITNESSETH:

WHEREAS, letters patent of the United States, No. A76544, for an improvement in boilers, were granted to the Licensor on January 5, 1922; and

¹ Adapted from *Cummings v. Standard Harrow Co.* (1915), 195 N. Y. 313, 80 N. E. 1117.

WHEREAS, the Licensor has invented a certain other new and useful improvement in boilers, for which he has made application for letters patent of the United States, which application was filed on April 6, 1922, and bears Serial No. 45321; and

WHEREAS, the Licensor is the owner of said letters patent and of all rights under the same, and the said Licensor is the owner of the new and useful improvement claimed and described in said application for letters patent, and of all rights, interest and licenses in respect thereof; and

WHEREAS, the Licensee is desirous of acquiring the sole and exclusive right and license to manufacture and sell boilers containing the said patented improvement and/or containing the aforesaid new and useful improvement, which is claimed, or described, in the aforesaid application for letters patent and/or in any letters patent which may hereafter be granted to, or owned by, the Licensor for any invention, or improvement, in boilers, during the continuance of this agreement:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. The Licensor hereby grants and conveys to the Licensee the sole and exclusive right and license to manufacture and sell throughout the United States, subject to the conditions hereinafter named, boilers containing inventions or improvements, claimed in the aforesaid letters patent and/or in the application for letters patent aforementioned, and/or in any other letters patent for any invention, or improvement, in boilers, which may be granted to, or owned by, the Licensor, during the continuance of this agreement, to the end of the term, or terms, for which such letters patent are, or may be, granted.

2. The Licensee agrees to keep true and correct books of account, in which shall be entered each boiler manufactured and sold by it, and which is subject to the terms of this agreement, and such books of account, during all business hours, shall be open to the examination and inspection of the Licensor, or his duly authorized attorney.

3. The Licensee shall render and deliver to the Licensor, on the first day of January in each year, a full and accurate statement, in writing, of all boilers manufactured and sold by it, during the preceding year, which contain any inventions or improvements which are hereinbefore referred to, and, simultaneously with the rendition and delivery of such statement, the Licensee shall pay

to the Licensor all license fees which shall then be due to the Licensor hereunder.

4. A. The Licensee shall pay to the Licensor, as a license fee upon every boiler manufactured by the Licensee, which may contain any of the inventions, or improvements, hereinbefore referred to, the following sum, or sums:

(a) A royalty of five (\$5) dollars on each of the first five thousand (5,000) of such boilers, which may have been manufactured and sold;

(b) A royalty of four (\$4) dollars on each of the next five thousand (5,000) of such boilers, which may have been manufactured and sold; and

(c) A royalty of three (\$3) dollars upon each and every other of such boilers, which may have been manufactured and sold.

B. It is understood and agreed that, if the Licensee shall be unable to collect the purchase price of any such boiler, or boilers, sold by it, by reason of the insolvency of the purchaser, or purchasers, thereof, that then, and in that event, the Licensee shall not be required to pay to the Licensor any license fee in respect of any such boiler, or boilers; provided, however, that, if the Licensee shall collect, or otherwise receive, any part of the purchase price of any such boiler, or boilers, then, and in such event, the Licensee shall pay to the Licensor, when such collection shall have been made, or received, by the Licensee, the ratable percentage of the license fee based upon the selling price at the time when such collection is made, or received.

C. The Licensee shall pay to the Licensor a license fee on at least one thousand (1,000) boilers in each calendar year, during the continuance of this agreement.

5. The Licensee shall have the right to terminate this agreement, on or before the first day of November in any year, by sending to the Licensor written notice to that effect, by registered mail, addressed to the Licensor, at the Licensor's last known place of residence; and, if such notice shall have been so given, this agreement shall cease and terminate on the 31st day of December next ensuing; but the Licensee shall have the right, nevertheless, to sell all of such boilers, which it might have on hand at the time of such termination, upon paying to the Licensor license fees at the rate hereinbefore specified.

6. The Licensee shall have the right to institute, or bring, any

suit, or suits, which the Licensee may be advised to institute, or begin, for, or by reason of, the infringement of any of the inventions, or improvements, which are hereinbefore referred to, or the letters patent in respect thereof, and, for that purpose, shall have the right to use the name of the Licensor as a party complainant, either solely, or jointly with the Licensee's own name, provided, however, that such suit, or suits, shall be instituted, brought, maintained and conducted solely at the cost and expense of the Licensee; and it is agreed that any and all sums which may be received, obtained, collected, or recovered in any such suit, or suits, whether by judgment, settlement, or otherwise, shall be the sole and exclusive property of the Licensee.

7. Upon the failure of the Licensee to keep true and accurate books of account, or upon the failure of the Licensee to permit the Licensor, or his duly authorized attorney, to examine and inspect the same, or upon the failure of the Licensee to render and deliver a full and accurate statement in writing of all boilers manufactured and sold by it, which contain any inventions, or improvements, which are hereinbefore referred to, or upon the failure of the Licensee to pay the full amount of license fees herein required to be paid, as and when the same shall become due, then, and in any such event, this agreement shall cease and terminate, at the option of the Licensor, by the service of a written notice upon the Licensee; but the Licensee shall not thereby be discharged from any liability to the Licensor for any license fees due, at the time of the service of such notice.

8. This agreement shall apply to, and bind, the Licensor, his legal representatives, heirs and assigns, and the Licensee, and its successors and assigns.

IN WITNESS WHEREOF, the Licensor has hereunto set his hand and seal, and the Licensee has caused this instrument to be signed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, the day and year first above written.

(Seal)

Attest:

John Jones,

Secretary.

John Doe (L.S.).

Richard Roe Co., Inc.,

By Richard Roe,

President.

No. 279.

Agreement granting license to use patented amusement device, which is renewable, at licensee's option.²

THIS AGREEMENT, made January 5, 1923, between Doe Derby Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal place of business at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Licensor"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Licensee"), WITNESSETH:

WHEREAS, letters patent of the United States No. A876654, for a game, or device, known as the "Doe Derby," were granted to the Licensor on January 5th, 1922; and

WHEREAS, the Licensee is desirous of hiring and using one of said games, or devices:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. The Licensor hereby leases to the Licensee, for a term of five (5) years from the date hereof, one ten-horse Doe Derby device, or game, with all the improvements and accessories thereto, including electric light installation, automatic signboard, scenery, counter and stage, and hereby grants to the Licensee all the rights and privileges to use and operate the same, during the said term, as hereinafter set forth.

2. The Licensor shall install the said device, or game, or cause the same to be installed, with complete equipment, ready for operation, on or before April 20, 1923, on premises to be furnished by the Licensee, on the thoroughfare known as the "Bowery," Coney Island, New York; and the Licensor agrees to provide the Licensee with any license therefor required by the municipal authorities, and to pay the license fees therefor.

3. The Licensee shall pay to the Licensor, for the use of said game, or device, and the rights and privileges hereinafter set forth, the sum of two thousand (\$2,000) dollars, payable, as follows:

(a) The sum of five hundred (\$500) dollars, upon the signing of this agreement.

(b) The sum of five hundred (\$500) dollars, when the game,

² Adapted from *Gonzales v. Kentucky Derby Co.* (1921), 197 App. Div. 277, 189 N. Y. Supp. 783.

or device, shall be fully installed, ready for operation, as above set forth.

(c) The sum of one thousand (\$1,000) dollars, by a promissory note for that amount, with interest at six (6%) per cent, dated April 18th, 1923, made by the Licensee to the order of the Licensor, and payable ninety (90) days from the date thereof.

4. The Licensor shall not itself operate, or sell, or lease, to any other person, firm or corporation, any other Doe Derby game, or device, to be operated on the thoroughfare, known as the "Bowery," Coney Island, New York, during the season of 1923, or as long thereafter as the Licensee shall have the exclusive right to operate the said game, or device, on said thoroughfare, as hereinafter provided.

5. The Licensee shall furnish a suitable place for the installation of said game, or device, on the thoroughfare, known as the "Bowery," Coney Island, New York, with proper electric connections for said installation, and agrees to operate such game, or device, during the season of 1923, at no other place in Coney Island, New York, except on said thoroughfare, known as the "Bowery." But, in the event that the municipal, or other authorities, should, for any reason, prevent the Licensee from operating said game, or device, on said thoroughfare, during such season of 1923, or should it become impracticable, or unprofitable, for any reason, to operate said game, or device, on said thoroughfare, during said season, then the Licensee may, at his own expense, remove such game, or device from said thoroughfare, and operate the same, in any other place in any part of the United States, in which the Licensor shall not, at that time, be operating said game, or device, or shall not, at that time have already given to any other person, firm or corporation the exclusive right to operate any similar game, or device.

6. At the close of the season of 1923, the Licensee may remove the said game, or device, from said thoroughfare in Coney Island, New York, and operate the same in any other place in any part of the United States, in which the Licensor shall not, at that time, be operating a similar game, or device, or shall not, at that time, have already given to any other person, firm or corporation the exclusive right to operate any similar game, or device.

7. The Licensee shall conduct the said game, or device, in a lawful and orderly manner, and shall comply with all municipal

ordinances and regulations in respect of the same; and the Licensee agrees that any coupon, or certificate, given by the Licensee to any customer, as evidence of the winning of a race, shall be marked, so as to indicate that the same is given at the game, or device, operated by the Licensee, and not at any game, or device, operated by the Licensor, or by any other person, firm or corporation, who, or which, may be operating a similar game, or device, at any other place.

8. The Licensor shall furnish the Licensee, during the term of this agreement, with all spare and repair parts, which may be required, and all improvements, which may be hereafter made in connection with the said game, or device, at the cost price thereof, plus ten (10%) per cent.

9. The Licensee may, at his option, obtain from the Licensor the exclusive right to operate said game, or device, on said thoroughfare, known as the "Bowery," Coney Island, New York, for the season of 1924, and for the seasons subsequent thereto, upon giving notice in writing to the Licensor, at its office in New York City, on or before January 1st in each year, of his election to exercise such option, and upon paying, or tendering, to the Licensor the sum of two hundred (\$200) dollars, at the time of giving such notice. If the said Licensee, however, shall fail to exercise this option in any one year, then, and in such event, this option shall cease for all subsequent years, but the other provisions of this agreement shall, nevertheless, remain in full force and effect, until the expiration thereof.

IN WITNESS WHEREOF, the Licensor has signed this instrument by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, and the Licensee has hereunto set his hand and seal, the day and year first above written.

Doe Derby Co., Inc.,

By John Doe,
(Seal) President.

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

No. 280.

Agreement granting sole and exclusive motion picture rights in book.³

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party is the author of a certain literary work, entitled "Mon," and has the sole right to permit the same to be printed, sold and circulated; and

WHEREAS, the Second Party is desirous of purchasing from the First Party the sole and exclusive right to produce the subject-matter and story of said book as a motion picture play, which right is exclusively owned and controlled by the First Party:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. The First Party hereby sells to the Second Party, and the Second Party hereby buys from the First Party, the sole and exclusive right of the First Party, in and to the motion picture rights of the subject-matter and story contained in the said book "Mon," and in the title thereof.

2. The Second Party shall pay therefor the sum of five hundred (\$500) dollars, upon the signing of this agreement, and the further sum of five hundred (\$500) dollars, within thirty (30) days thereafter.

3. The First Party shall request and direct the publishers of the said book to deliver to the Second Party all original letters and endorsements of said book; and the First Party hereby licenses the Second Party to use the same, or any of them, on any billing, advertising, or programs used in connection with the production, sale, and advertising of any and all motion pictures based upon the subject-matter and story of said book.

4. The Second Party shall display the name of the First Party as the author, and the name of the publisher, of said book, on all advertising, billing and programs of any such motion pictures.

5. The Second Party shall have the right to maintain any

³ Adapted from *Photo-Drama etc. Co. v. Social Uplift, etc. Corp.* (1915), 220 Fed. Rep. 448.

action, or actions, of any kind whatsoever, in any country, or countries, to restrain any person, firm, or corporation from using, in any manner the subject-matter, or story, of said book in motion pictures, or to recover any damages, which the Second Party may sustain, as the result of the wrongful and unlawful use of the said story, or subject-matter, of said book in motion pictures, or motion picture films.

6. This agreement shall be binding upon the parties hereto, and their heirs, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of
John Jones.

No. 281.

Agreement granting sole and exclusive right to publish book.⁴

Memorandum of agreement made this 5th day of January, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "author"), and Richard Roe & Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "publisher").

1. The author hereby grants and assigns to the publisher the sole and exclusive right to publish in book form a work now entitled, "The Planet of Mercury" (which title may be changed only by mutual consent in writing) in the United States of America and in the United Kingdom of Great Britain, Ireland and Wales.

2. It is understood and agreed that the copyright shall be taken out in the name of the author, and the publisher is hereby authorized to take all steps required to procure said copyright in the United States of America and in such other countries as may be covered by this agreement. The author agrees to apply for the renewal of said copyright on the expiration of the first term

⁴ Cf. *New Fiction Publishing Co. v. Star Co.* (1915), 220 Fed. Rep. 994; *Pulmer v. DeWitt* (1872), 47 N. Y. 532.

thereof, and to assign to the publisher the sole and exclusive right to publish the said work as herein provided during the full term of said renewal on the same terms and conditions as the original copyright term.

3. The author guarantees and represents that the said work has not heretofore been published in book form, that it is innocent and contains no matter libelous or otherwise unlawful, or which infringes any proprietary right at common law or any statutory copyright, that he is the sole author and proprietor of the said work and has full power to make this agreement and grant, and that he will hold harmless the publisher against any suit, claim, demand or recovery, finally sustained, by reason of any violation of proprietary right or copyright by, or any unlawful matter contained in the said work. The copyright shall be assigned by either party to the other on demand, when necessary for bringing, defending or maintaining a copyright action under this agreement, after the termination of which action the copyright shall on demand be re-assigned.

4. The author agrees to deliver to the publisher on or before the 1st day of May, 1923, a copy of the manuscript complete and ready for the press, but should he fail so to do, the publisher may decline to publish said work.

5. The author further agrees that he will not during the continuance of this agreement furnish to any other publisher any work on the same subject or of competing character, or material therefor, unless and until he shall have offered such work to the said publisher, who shall have an option of thirty days for the acceptance thereof.

6. If the publisher is directed by the author to make alterations in any proofs from final copy as delivered which shall cost more than fifteen (15%) per cent of the cost of composition of the said work, the author agrees to pay said excess, and the publisher shall upon request keep the author informed of such excess charges.

7. The publisher undertakes to publish the said work at its own expense in such style or styles as it deems best suited to its sale, at a catalogue retail price of not less than one dollar and seventy-five cents (\$1.75) nor more than two (\$2) dollars, cloth style, and at a time not to exceed one year after the receipt by it of a complete manuscript of the said work ready for the press and released for book form publication (which limit, in case of strikes or other

nonpreventable delays, or in case the author fails to return final proofs within thirty [30] days after delivery to him, shall be extended to cover such delays), and should the publisher fail to publish the said work before the expiration of said period, this agreement shall terminate, unless said termination shall be mutually waived by the parties hereto.

8. The author agrees to revise the first, and, if it be requisite, at any time during the continuance of this agreement, to revise every subsequent edition of the work, and from time to time to supply any new matter that may be needed to keep the work up to date. In the event of the author neglecting or being unable to revise the work or to supply new matter where needful, the publisher may procure some other person to revise the work or to supply new matter, and may deduct the expense thereof from royalties accruing on such revised editions, provided that if such revision or extension be not made by the author, the publisher shall cause this fact to be evident in the revised editions.

9. The publisher agrees to pay to the author or to his duly authorized representatives ten (10%) per cent on the catalogue retail price for each copy of said work sold up to and including two thousand (2,000) copies, and agrees to pay fifteen (15%) per cent on all copies sold over two thousand (2,000) and up to five thousand (5,000), and twenty (20%) per cent on all copies sold thereafter. Where copies are sold for export at a reduced price the royalty shall be calculated on the amount actually received instead of on the retail price. Where copies are sold in quantities sufficient to justify special discounts of fifty per cent on the retail price, or where the royalty shall be calculated on the sums actually received instead of on the regular retail trade price of the work, no royalties shall be payable on copies furnished gratis to the author or for review, advertising, sample, or like purposes or on copies destroyed by fire or water.

10. The publisher agrees to render semi-annual statements of account to June 1 and December 1st of each year, on July 1st and January 1st following, which statements shall be mailed to the last known address of the author, and if such statement fail to reach the author, to furnish duplicate statements on request, and to make settlement in cash on July 15th and January 15th, provided that accounts involving branch houses in other countries or

other foreign arrangements, may be rendered and payment made yearly instead of semi-annually.

11. The publisher agrees to present to the author fifteen (15) free copies of the said work upon publication, and to permit the author to purchase at the lowest trade price further copies for his own personal use.

12. It is understood and agreed that two (2) years from the date of publication of the work the publisher may publish under its own imprint a cheap edition of said work and that it shall pay to the author in consideration for the right to publish said cheap edition ten per cent of the retail price of each copy sold of said edition, and the publisher shall also have the right to lease the plates of said work to a regular cheap edition publisher and in consideration for this right he shall pay the author one-half of any amount received from said reprint publishers. Payments and accountings under this clause shall be subject to the provisions of clause 10 hereof.

13. In case the publisher fails to keep the said work in print and for sale, and after written demand from the author declines to reprint the work within six (6) months and to offer it for sale, or in case after two years from the date of first publication, the said work, in the opinion of the publisher is no longer merchantable or profitable, and he gives three months' notice to the author of his desire and intention to discontinue publication, this contract shall terminate and all rights granted under this agreement shall revert to the author, and all plates of the work, if such have been made and preserved, with any plates of illustrations furnished by the author and any remaining copies shall be transferred to the author, provided that the author shall pay twenty (20%) per cent of the manufacturing cost (including composition) of such plates and thirty (30%) per cent of the manufacturing cost of any remaining copies or sheets, in default of which purchase the publisher shall have the right to melt any plates and sell remaining copies or sheets at cost or less, without payment of royalty to the author upon such copies.

14. If the plates or type forms of said work shall be destroyed or rendered valueless by fire or otherwise, the publisher shall have the option of reproducing them or not, and if it declines to do so, then after the sale of all copies remaining on hand, this contract

shall terminate and all rights granted herein shall revert to the author.

15. In case of bankruptcy (or liquidation for any cause whatever) of the publisher the author shall have the right to buy back the rights of publication at a fair market value, to be determined by agreement or arbitration, together with any plates and remaining copies or sheets at (manufacturing cost or) the fair market value, this also to be determined by agreement or arbitration, and thereupon this contract shall terminate.

16. The author shall have the right upon written request to examine, through certified public accountants, the books of account of the publisher in so far as they relate to the said work, which examination shall be at the cost of the author, unless errors of accounting (arising otherwise than from interpretation of this contract) amounting to five per cent of the total sums paid the author shall be found to his disadvantage, in which case, the cost shall be paid by the publisher.

17. In any case arising under the provisions of this agreement, in which compensation is not specified in this agreement, or which is not otherwise herein provided for (or in case of difference of opinion as to the interpretation of this agreement), then such case may be covered by special agreement (supplementary hereto), in default of which it shall be settled by arbitration in accordance with the rules of the chamber of commerce of New York, unless another method of arbitration shall be agreed upon by both parties.

18. This contract shall be binding upon the assigns, heirs, executors, or administrators, of the author, and upon the assigns or successors of the publisher, but no assignment shall be binding on either of the parties without the written consent of the other party to this agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals.

John Doe (L.S.).

Richard Roe & Co., Inc.,

By Richard Roe,

President.

(Seal)

Attest:

John Jones,

Secretary.

No. 282.

Agreement granting sole and exclusive right to translate and produce foreign play.⁵

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 24 Rue Turbigo, Paris, France, acting by his duly authorized agent, Richard Roe, who has an office at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "Owner"), and Henry Koe, residing at No. 371½ Broadway, Borough of Manhattan, New York City (herein called the "Buyer"), WITNESSETH:

WHEREAS, the Owner is the owner of the sole and exclusive rights of presentation in the English language in the United States of America and in the Dominion of Canada, of the certain French three-act play entitled "Mon," written by John Doe, and hereinafter, for convenience, called "the said play"; and

WHEREAS, the Buyer desires to acquire the exclusive right to translate, adapt, produce and present the said play in the English language in the United States of America and in the Dominion of Canada, or cause the said play to be translated, adapted, produced and presented in such territory, for the period of ten (10) years succeeding the first performance of the said play under this agreement:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. The Owner grants to the Buyer, and the Buyer hereby purchases from the Owner, the exclusive right to translate, adapt, produce and present, and to give the right of translating, adapting, producing and presenting the said play in the English language, in the United States of America and in the Dominion of Canada, otherwise than as a film or motion picture, for a period of ten (10) years, from and after the first performance thereof.

2. The Buyer shall pay the Owner therefor, upon the signing of this agreement, the sum of two thousand (\$2,000) dollars, which sum shall be credited towards the payment of first royalties due as hereinafter provided for.

3. (a) The Buyer, as royalty for the performance of the said play on the stage, shall pay to the Owner, in currency of the United

⁵ Cf. *Manners v. Morosco* (1920), 252 U. S. 317, 40 Sup. Ct. Rep. 342, 64 Law ed. 390.

States, the following sums, not later than the first Wednesday following each and every week during which a performance, or performances, of said play may be given, *viz.*:

(1) A sum equal to four (4%) per cent of the first four thousand (\$4,000) dollars of gross weekly receipts;

(2) A sum equal to six (6%) per cent of the next two thousand (\$2,000) dollars of gross weekly receipts;

(3) A sum equal to eight (8%) per cent of all gross weekly receipts in excess of six thousand (\$6,000) dollars.

(b) The Buyer shall deliver to the Owner accurate weekly statements of the gross weekly box-office receipts, resulting from any performances of the said play, which statements shall be signed by the Buyer and countersigned by the treasurer, or treasurers, of the theatre, or theatres, in which any and all such performances, presentations and productions of the said play shall have been given.

4. The said play shall be produced by the Buyer, on or before October 5, 1923; and, if the said play shall not be produced and presented, on or before October 5, 1923, all rights of the Buyer of whatsoever kind, name, or nature, in and to said play, and all rights granted by this agreement, shall forthwith cease and revert to the Owner.

5. (a) If the Buyer shall present the said play for not less than twenty-five (25) times, within one (1) year after the first performance of the said play, and if the Buyer shall have complied with all the terms and conditions of this agreement, then, and in such event, and in that event only, the net royalties which may thereafter be derived from the performance of the said play in stock theatres and by stock companies within the territory embraced by this agreement, shall be divided equally between the Owner and the Buyer.

(b) It is expressly agreed that the said play shall be released for production by stock companies and in stock theatres within a reasonable time after the play shall have ceased to be presented as a road attraction; and, for the purposes of this agreement, the play shall be considered to have ceased to be presented as a road attraction, if the play shall not be produced by the Buyer for at least forty (40) times in any period, dating from September first of one year to June first of the following year.

6. The Owner reserves to himself the motion picture and film

rights to the said play, throughout the world, and all receipts and income derived therefrom shall belong absolutely to the Owner. The Owner covenants not to give, or grant, any authorization to exhibit motion pictures, or films, based upon the said play in the United States of America and in the Dominion of Canada, for a period of two (2) years from the first performance of the said play under this agreement; and the Buyer waives all claims in connection with the exhibition of a motion picture, or film, based upon the said play, after the expiration of the said period.

7. All book and serial rights, operatic rights, and rights of performance in the French language and all other languages, except the English language, as well as all other rights whatsoever, which are not herein specifically granted, or given, to the Buyer, shall belong to the Owner; and all receipts, earnings, or profits derived from any such source, throughout the world, shall belong to the Owner.

8. The Owner shall not publish, or authorize the publication of, books pertaining to the said play, without complying with all the requirements and regulations of the copyright law of the United States of America. In the event of an infringement of the said play by other persons in the Buyer's territory, the Owner shall not be obligated to prosecute, or sue, such persons, but the Buyer may prosecute, or sue, such persons, at his own risk, peril and expense; nor shall the Buyer have any claim against the Owner for any of such infringements; and any sums recovered by the Buyer in any infringement proceeding, or action, by settlement, or otherwise, shall belong to the Buyer.

9. The Buyer shall print the name of the Owner as the author of said original play, on all programs, posters, and other media of advertisement, pertaining to the said play.

10. The Owner hereby allows the Buyer the right to make such alterations in the said play as the Buyer may deem to be useful or necessary, in order to adapt the said play for use on the American and Canadian stages.

11. If the Buyer shall, at any time, in any way, fail to fulfill any of the terms and conditions of this agreement, or shall fail promptly to pay any royalties, as hereinbefore set forth, the Owner may thereupon, by registered letter sent to the Buyer, at his last known address, serve notice requiring the Buyer to remedy such breach or breaches forthwith, and, if the Buyer shall fail to comply

with such written request, within ten (10) days after the date of such request, the Owner shall be at liberty to terminate this agreement absolutely; and, in the event of such termination, any and all rights granted and assigned by the Owner to the Buyer hereunder shall immediately revert to the Owner, but without prejudice, however, to any right, or rights, to compensation, or damages, or cause, or causes, of action, which the said Owner may, or might, have in respect of any such breach, or breaches, of this agreement on the part of the Buyer.

12. This agreement shall be binding upon, and inure to the benefit of, the heirs, executors, administrators, assigns, and successors of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.),
By Richard Roe,
Attorney-in-fact.
Henry Koe (L.S.).

In the presence of
John Jones.

No. 283.

Agreement granting non-exclusive license with royalty— official form.*

THIS AGREEMENT, made this 5th day of January, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, party of the first part, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, party of the second part, WITNESSETH:

WHEREAS, letters patent of the United States No. A876554, for an improvement in boilers, were granted to the party of the first part on the 5th day of January, 1922; and

WHEREAS, the party of the second part is desirous of manufacturing boilers containing said patented improvements;

NOW, THEREFORE, THE PARTIES HAVE AGREED, AS FOLLOWS:

I. The party of the first part hereby licenses and empowers the party of the second part to manufacture, subject to the conditions hereinafter named, at his factory in the Borough of Manhattan,

* Adopted by U. S. Patent Office.

New York City, and in no other place or places, to the end of the term for which said letters patent were granted, the boilers containing the patented improvements, and to sell the same within the United States.

II. The party of the second part agrees to make full and true returns to the first party, under oath, upon the first days of January and July in each year, of all boilers containing the patented improvements manufactured by him.

III. The party of the second part agrees to pay to the party of the first part ten (\$10) dollars as a license fee upon every boiler manufactured by the said party of the second part containing the patented improvements; provided, that if the said fee be paid upon the days provided herein for the semi-annual returns, or within ten (10) days thereafter, a discount of ten (10%) per cent shall be made from said fee for prompt payment.

IV. Upon a failure of the party of the second part to make returns or to make payment of license fees, as herein provided, for twenty (20) days after the days herein named, the party of the first part may terminate this license by serving a written notice upon the party of the second part; but the party of the second part shall not thereby be discharged from any liability to the party of the first part for any license fees due at the time of the service of said notice.

IN WITNESS WHEREOF, the parties above named have hereunto set their hands, the day and year first above written, at the Borough of Manhattan, in the County of New York, and State of New York.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Smith.

Henry Koe.

No. 284.

Shop-right license—official form.⁷

In consideration of the sum of five hundred (\$500) dollars to be paid by the firm of Doe & Doe, of No. 37½ Broadway, in the county of New York, state of New York, I do hereby license and empower the said Doe & Doe to manufacture in said county of

⁷ Adopted by U. S. Patent Office.

New York the improvement in boilers, for which letters patent of the United States No. A876554 were granted to me the 5th day of January, in the year 1922, and to sell the machines so manufactured throughout the United States to the full end of the term for which said letters patent are granted.

Signed at the Borough of Manhattan, in the County of New York, and State of New York, this 5th day of January, 1923.

Richard Roe (L.S.).

Witness:

John Jones.

Henry Koe.

No. 285.

Agreement whereunder refining company loans pump, tank and equipment to retailer for use only with the refining company's products.⁸

THIS AGREEMENT, made January 5, 1923, between Doe Refining Company, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the Second Party now is purchasing gasoline from the First Party, and, for the purpose of better storing and handling such gasoline, desires to install on his premises, situated at No. 37½ Broadway, Borough of Manhattan, New York City, certain equipment, consisting of one pump, two tanks, and the customary appliances connected therewith; and

WHEREAS, the Second Party desires to borrow from the First Party, and the First Party is willing to loan, such equipment to the Second Party, upon the terms and conditions hereinafter set forth:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the First Party hereby agrees to furnish and loan to the Second Party, and the Second Party agrees to receive and use, such equipment for the sole purpose of storing and handling gaso-

⁸ Adapted from *Federal Trade Commission v. Sinclair Refining Co.* (1923), U. S., 43 Sup. Ct. Rep. 450, 67 Law ed. 483.

line purchased by the Second Party from the First Party, and for no other purpose whatsoever.

2. That such equipment shall, at all times, remain the property of the First Party, and the Second Party shall, at his own cost, maintain such equipment in good condition and repair, so long as he shall continue to use the same.

3. That the Second Party shall not encumber, or remove, such equipment, or do, or suffer to be done, anything whereby such equipment, or any part thereof, may be seized, taken on execution, attached, destroyed, or injured, or by which the title of the First Party thereto may, in any way, be altered, destroyed, or prejudiced.

4. That the Second Party shall indemnify and save harmless the First Party from any liability for loss, damage, injury, or other casualty, to persons, or property, caused, or occasioned, by any leakage, fire, or explosion of gasoline stored in said tanks, or either of them, or drawn through said pump, or the appliances connected, or used, therewith, or through any imperfection in the construction, installation, or operation of the same, whether due to the negligence of the First Party, or otherwise.

5. (a) That, if the Second Party shall, at any time, use such equipment for any purpose other than the storing and handling of gasoline sold by the First Party, or if the Second Party shall, for fourteen (14) consecutive days, cease to handle gasoline secured from the First Party, then the First Party shall have the right to declare this agreement null and void, and the said First Party shall thereupon have the right and privilege, without notice to the Second Party, to charge such equipment to the account of the said Second Party, at the sum of five hundred (\$500) dollars, which, it is hereby mutually agreed, is the reasonable value thereof, or, at its option, to enter upon the premises where such equipment may be located, with men, horses, wagons and such appliances as may be necessary, and remove the same therefrom, without recourse to any legal proceedings for that purpose.

(b) That, if such equipment shall be charged, as aforesaid, the amount so charged shall be due and payable forthwith.

6. That this agreement shall terminate forthwith, upon the sale, or other disposition, of said premises by the Second Party, or upon the sale, or other disposition, of the business in connection with which the said equipment is used by the Second Party, and,

in any event, upon the expiration of twelve months from the date hereof.

7. That this contract shall be executed in triplicate, and it is agreed that the contract retained by the First Party shall be considered the original, and shall be the binding agreement, if the duplicate, or duplicates, thereof shall vary from it in any particular.

IN WITNESS WHEREOF, the First Party has signed this instrument by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

Doe Refining Company,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

CHAPTER XIV
MASTER AND SERVANT

Section 1.—Agreements of Employment.

- No. 286—Agreement of employment from week to week.
- No. 287—Agreement of employment, terminable at election of employer, whereunder employee covenants not to aid any rival company, during term of the contract.
- No. 288—Agreement of employment, whereunder employee covenants not to disclose trade secrets and secret processes, or compete with employer, during and after the term of employment.
- No. 289—Agreement hiring actor—official form.
- No. 290—Agreement hiring actor for “run of the play”—official form.
- No. 291—Agreement hiring chemist as consultant, whereunder chemist covenants to transfer to employer all discoveries relating to latter’s business and whereunder chemist may act as consultant to those engaged in other lines of business.
- No. 292—Agreement hiring designer, whereunder employee agrees to travel abroad.
- No. 293—Agreement hiring designer, with covenant to indemnify employee for breach of a prior contract of employment.
- No. 294—Agreement hiring driver and collector in laundry business, whereunder employee covenants, after termination of hiring, not to compete with, or disclose the names of the customers of, the employer, or to solicit their business.
- No. 295—Agreement hiring general superintendent, upon a basis of salary and share of profits.
- No. 296—Agreement hiring hotel cook, upon a month to month basis, whereunder employee agrees to permit the employer to search his person and effects, and covenants not to join labor union or to strike.

- No. 297—Agreement hiring manager of branch office to sell securities.
- No. 298—Agreement hiring salesman for specific territory, upon a commission basis, under which employer agrees to make advances and pay traveling expenses against commissions.
- No. 299—Same—another form.
- No. 300—Same—another form, whereunder employer agrees to loan weekly sums to employee, who agrees to repay same on demand.
- No. 301—Agreement hiring silk finisher, whereunder the employee agrees to perform his work in a manner satisfactory to the employer and his customers.

Section 2.—Miscellany.

- No. 302—Agreement terminating agreement of employment, with mutual releases.
- No. 303—Clause making certificate of employer's accountant conclusive in ascertaining employee's share of profits.
- No. 304—Clause permitting employer to transfer agreement of hiring to corporation acquiring his business.
- No. 305—Clause prohibiting employee from disclosing employer's trade secrets or working for others.
- No. 306—Clause terminating contract of hiring, upon destruction or injury by fire of employer's factory or office.

SECTION 1.—AGREEMENTS OF EMPLOYMENT.

No. 286.

Agreement of employment from week to week.¹

AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Employer"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Employee"),

¹ *Cf. Daveny v. Shattuck* (1880), 9 Daly (N. Y.), 66.

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The Employer hereby hires the Employee to work for him as a bookkeeper, and the Employee hereby accepts said employment, upon the following terms, to wit:

(a) Said employment shall be from week to week only, and may be terminated, by either party, at the end of any week.

(b) The Employee's compensation shall be the sum of fifty (\$50) dollars a week.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John* Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

No. 287.

Agreement of employment, terminable at election of employer, whereunder employee covenants not to aid any rival company, during term of the contract.²

THIS AGREEMENT, made January 5, 1923, between Doe Company, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the Second Party has, for several years, been in the employment of the First Party, in its business of manufacturing and selling paper dress patterns and other forms of business connected therewith; and

WHEREAS, the parties hereto desire to enter into a new agreement, respecting the nature, extent and obligations of such employment in the future and the compensation therefor; and

WHEREAS, in the course of such employment, the Second Party may be assigned to duties that may give him knowledge, or information, of such confidential, or other, matters, relating to the conduct and details of the business of the First Party as will

² Adapted from *McCall v. Wright* (1910), 198 N. Y. 143, 91 N. E. 516, 31 L. R. A. (N. S.) 249.

result, in the opinion of the President of the First Party, in irre-medial injury to it, for which no money damages could adequately compensate it, if the Second Party should enter into the employ-ment of a rival concern, while this contract is still in effect:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. The Second Party agrees to continue in the employment of the First Party, for a period of five (5) years from January 5, 1923, unless said employment shall be sooner terminated by the First Party, as hereinafter provided.

2. (a) The nature of the duties and the employment of the Second Party, under this contract, shall be such as shall be assigned to him, from time to time, during the term of said employment, by the First Party, or its President.

(b) The Second Party agrees to engage in no other occupation, during said period, and to use his best endeavors to promote the business and the business interests of the First Party, and well and successfully to perform the several duties that shall be assigned to him by the First Party, or its President, while this contract shall be in force.

(c) The regular hours of said employment shall be from 9.30 A.M. to 5.00 P.M.

3. (a) That for his services, as aforesaid, the First Party shall pay to the Second Party the sum of five hundred (\$500) dollars a month.

(b) Such salary, or compensation, shall be paid to the Second Party on the first day of the month next following that in which the same shall have been earned.

(c) That, for all time had by the Second Party from said employment, a corresponding, or proportionate, deduction shall be made in his salary, or compensation, as above provided for; except for the period, or periods, of any vacations with pay that may, at the option of the First Party, be granted to the Second Party.

4. The First Party shall have the right and option to terminate this agreement, at any time, upon giving to the Second Party not less than thirty (30) days' notice of its intention to exercise such right and option.

5. If the Second Party, while this contract remains in effect, shall, in violation of its terms, enter into the employ, or service, or otherwise act in aid of the business, of any rival company, or concern, engaged in the same, or a similar, general line of business,

the First Party shall be entitled to an injunction, to be issued by any competent court of equity, enjoining and restraining the Second Party, and each and every other person concerned therein, from the continuance of such employment, service, or other act, in aid of the business of such rival company, or concern.

IN WITNESS WHEREOF, the First Party has caused this instrument to be signed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

Doe Company, Inc.,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

No. 288.

Agreement of employment, whereunder employee covenants not to disclose trade secrets and secret processes, or compete with employer, during and after the term of employment.³

THIS AGREEMENT, made January 5, 1923, between John Doe Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party is engaged in the business of manufacturing and selling glucose, grape juice, starch and other kindred products of corn, and the various products manufactured in glucose and starch factories; and

WHEREAS, the Second Party has had several years of experience in the business of manufacturing the aforesaid products, and desires to enter the employment of the First Party in such manufacturing

³ Adapted from *Corn Products Refining Co. v. U. S.* (1919), 249 U. S. 621, 39 Sup. Ct. Rep. 291, 63 Law ed. 805.

business, and the First Party is desirous of employing the Second Party therein; and

WHEREAS, the First Party, in its aforesaid business, uses certain trade secrets and secret processes of manufacture, which will, necessarily, be communicated to the Second Party, by virtue of his employment by the First Party; and

WHEREAS, the First Party desires to protect and preserve the same as secrets, for its own use:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. The Second Party hereby agrees to enter the service of the First Party, and the latter hereby agrees to employ the Second Party in and about its aforesaid business, for a term of two years from and after the date hereof, at a salary of two hundred (\$200) dollars a week, payable at the end of each and every week.

2. That, during the term of such employment, the Second Party shall devote all of his time and attention, and give his best effort and skill, exclusively to the business and interests of the First Party, and shall perform such services, in and about such business of the First Party, as may, from time to time, be assigned to him, and shall, in all respects, do his utmost to further enhance and develop the best interests and welfare of the First Party.

3. The Second Party covenants and agrees that he will not, during the term of this contract, and for five (5) years thereafter, directly or indirectly, enter the employment of, or render any services to, any other person, partnership, or corporation, engaged in the business of manufacturing grape juice, glucose, starch and other kindred products, or any products produced in glucose or starch factories, within a radius of one thousand (1,000) miles of the city of Buffalo, New York; and that, during said term, and for five years thereafter, he will not engage in such business on his own account, or become interested therein, directly or indirectly, as an individual, partner, stockholder, director, officer, clerk, principal, agent, employee, trustee, or in any other relation, or capacity whatsoever, except as provided in paragraph "1" hereof.

4. The Second Party covenants and agrees that he will not, during the term of this contract, and for five (5) years thereafter, whether in the employment of the First Party or not, communicate, or divulge, or use for the benefit of, any other person, partnership, or corporation, any of the trade secrets, or secret processes of manufacture, used, or employed, by the First Party, in and about

its said manufacturing business, and which may be communicated to the Second Party by virtue of his employment hereunder.

IN WITNESS WHEREOF, the First Party has hereunto signed its name, by its President thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

John Doe Co., Inc.,

By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

No. 289.

Agreement hiring actor—official form.⁴

AGREEMENT, made this 5th day of January, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (hereinafter called "Manager"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (hereinafter called "Actor").

1. The Manager engages the Actor to render services in the part of Henry Koe in the play entitled "The Man from Mercury," and to render services as understudy for the part of William Jones in the said play, upon the terms herein set forth, and the Actor hereby accepts such engagement on the following terms:

2. The date of the first public performance shall be the 10th day of February, 1923, or not later than fourteen days thereafter. Employment hereunder shall begin on the date of the beginning of rehearsals and shall continue until terminated by such notice as is herein provided.

3. The Manager agrees, as compensation for services hereunder, to pay the Actor the sum of one hundred (\$100) dollars every week from the date of the first public performance of the play.

4. (a) The Actor, if required, shall give four weeks' rehearsal

⁴Adapted from the "Independent Minimum Standard Form of Contract" prepared and used by the Actors' Equity Association, New York City.

without pay; if further rehearsals are required, then, for each additional week or part thereof, the Manager shall pay the Actor full salary therefor.

(b) Rehearsals shall be considered to be continuous from the date of the first rehearsal to the date of the first public performance of the play as provided in paragraph two.

(c) If the above play is a musical play, or a spectacular production, then, wherever the word "Four" appears with reference to rehearsals in this contract, the word "Five" shall be substituted.

5. This contract may before the beginning of rehearsals be terminated as follows:

If this contract be signed and entered into prior to two months of the date mentioned in paragraph two:

(a) By either party giving the other written notice and making payment of a sum equal to two weeks' salary.

This contract may, during rehearsals, be terminated as follows and not otherwise:

(b) At any time during the first ten days' rehearsals of the Actor by either party giving written notice, if this contract be signed and entered into within two months of the date mentioned in paragraph two, except in case the Actor be re-engaged for a part which he has previously played; or

(c) At any time after the first ten days' rehearsals of the Actor, by the Manager, by paying the Actor a sum equal to two weeks' salary.

(d) The Actor may cancel the contract by giving written notice and paying to the Manager a sum equal to two weeks' salary.

(e) If a play be rehearsed less than ten days and abandoned by the Manager, the Manager shall pay the Actor one week's salary.

6. Either party may terminate this contract at any time on or after the date of the first public performance of the play by giving the other party two weeks' written notice.

7. (a) If the play runs four weeks or less, the Manager may close the play and company without notice, and terminate the right of the Actor to further compensation, except as hereafter provided, provided he has paid the Actor for all services rendered from the date of first public performance, and in no event less than two weeks' salary. Should the A. E. A. consent the Manager may re-open the play during the current season, in which event he shall offer the Actor a re-engagement under this form of contract upon

the same terms and upon acceptance by the Actor enter into with the Actor such contract of re-engagement. Should the Manager fail to do this or re-open the play without the consent of the A. E. A., the previous terms of this clause shall not apply to the Actor and Clause 6 shall remain in full force.

(b) If the play shall run more than four weeks, the Manager shall give one week's notice of the closing of the season of the play and company, and thereby terminate the right of the Actor to compensation except for services performed to the date of closing pursuant to such notice.

8. If the Manager is prevented from giving rehearsals because of fire, accident, riot, strikes, illness of star, or prominent member of the cast, Act of God, public enemy or any other cause which could not reasonably be anticipated, or prevented, then the time so lost shall not be counted as part of the four weeks' rehearsal period herein provided. When said time so lost shall exceed two weeks, the Actor shall be free if he so elects.

9. (a) The Actor shall furnish and pay for such clothes as are customarily worn by civilians of the present day in this country, together with wigs, boots, and shoes necessarily appurtenant thereto. All other clothes, wigs, shoes, costumes and appurtenances and all "properties" to be furnished by the Manager.

(b) If the Actor be a woman, then the following clause supersedes (a) :

In both dramatic and musical companies all gowns, hats and all "properties" of the actress shall be furnished by the Manager. Footwear and wigs for modern plays to be furnished by the Actress.

(c) It is understood that in every case where the Manager furnished costumes and appurtenances under this paragraph of the agreement, if notice of cancellation of this contract be given by such Actor, in that event he or she shall reimburse the Manager for the necessary and reasonable expense to which he or she may be put in altering or rearranging such costumes for his or her successor.

10. (a) Eight performances shall constitute a week's work. A sum equal to one-eighth of the weekly salary shall be paid for each performance over eight in each week.

(b) Salaries shall be paid on Saturday night.

11. The Manager hereby agrees to transport at his expense the Actor when required to travel, including transportation from New York City to the opening point, and back to New York City from

the closing point; also the Actor's personal baggage up to two hundred pounds weight.

12. (a) If this contract is cancelled by the Manager, he agrees to pay the railroad fare of the Actor back to New York City.

(b) If this contract is cancelled by the Actor, he agrees to pay his own railroad fare back to New York City, and to reimburse the Manager for any railroad fare the Manager may have to pay for the Actor's successor up to an amount not exceeding railroad fare from New York City to the point where said successor joins the Company.

(c) If the Company is organized and its members are engaged outside of New York City, the name of such place is, unless otherwise stated, herein agreed to be substituted for New York in paragraphs eleven and twelve.

13. The Actor shall travel with the Company by such routes as the Manager may direct, and the Actor shall not demand compensation for any performance lost through unavoidable delay in travel which prevents such performance by the Company.

14. It is further agreed that if the Company cannot perform because of fire, accident, strikes, riot, act of God, the public enemy, or for any other cause which could not be reasonably anticipated or prevented, or if the Actor cannot perform or rehearse on account of illness or any other valid reason, then the Actor shall not be entitled to any salary for the time during which said services shall not for such reason or reasons be rendered. If this illness of the Actor should continue for a period of ten days or more, the Manager may terminate the contract.

15. Beginning with the season of 1920-1921, full salaries will be paid the week before Christmas and Holy week, but during the season, 1919-1920, the Manager has the right to lay off the Company without salary for the week before Christmas and the week preceding Easter Sunday, or both weeks, if desired. In the event of such lay-off, the Manager shall not be entitled to the services of the company unless rehearsals be made necessary by the sudden illness of the star, or of some prominent member of the company or of change in the cast.

16. The Actor agrees to be prompt at rehearsals, to pay strict regard to make-up and dress, to perform his services in a competent and painstaking manner, to abide by all reasonable rules and regulations, and to render services exclusively to the Manager from the

date of the beginning of rehearsals, and shall not render services to any other person, firm or corporation, without the consent of the Manager.

17. All communications which refer to the Company in general shall be posted upon the call-board. Notice to the Manager must be given to him personally or to his representatives.

18. The Manager agrees that (1) all actors in the company in which the actor is herein employed and (2) all actors in any company in which any member of the A. E. A. is employed and which the Manager individually, or as a co-partner, or through a corporation presents or manages, or controls or signs contracts for, shall be and shall continue throughout the term hereof to be members in good standing of the Actor's Equity Association. In case of a breach hereof the Actor (without prejudice to his right to termination at any time upon any lawful ground) may terminate this agreement forthwith, in which case the Manager agrees to pay the Actor all sums due to date of termination, plus his return fare and plus, as liquidated damages (no present basis for calculation existing) a sum equal to two weeks' salary.

19. In event any dispute shall arise between the parties as to any matter or thing covered by this contract, then said dispute or claim shall be arbitrated. The Manager shall choose one arbitrator and the Actors' Equity Association the second. If within three days these arbitrators shall not be able to agree, then, within that time they shall choose a third, who shall not in any way be connected with the theatrical profession.

If they fail to do so, John Smith, or his appointee shall be the third. The arbitrators shall hear the parties and within ten days decide the dispute or claim.

The decision of a majority of said arbitrators shall be the decision of all, and shall be binding; and said decision shall be final.

The arbitrators shall determine by whom and in what proportion the cost of the arbitration shall be paid. The parties hereby appoint said Board its agents, with full power to finally settle said dispute or claim, and agree that its decision shall constitute an agreement between them, having the same binding force as if agreed to by the parties themselves.

Should suit be brought before the selection of arbitrators, the party sued may (unless he shall have previously refused arbitration at the request of the other party, or neglected to accept same when

tendered) at any time after suit and before trial give notice to arbitrate, and then in such case arbitrators must be chosen as stated hereinabove.

IN WITNESS WHEREOF, we have hereunto set our hands the day and year first above written.

John Doe, Manager.

Richard Roe, Actor.

No. 290.

Agreement hiring actor for "run-of-the-play"—official form.⁵

AGREEMENT made this 5th day of January, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (hereinafter called "Manager"), and Henry Koe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (hereinafter called "Actor").

1. The Manager hereby hires the Actor to render services, as such, in the part of Richard Roe, in the play hereinafter mentioned, and the Actor hereby accepts the said engagement; such hiring to be subject to the terms hereinafter set forth.

2. The term of employment shall be the run of the play now called "The Man from Mercury" during the season of 1923-1924 which said season is agreed to be the period between the first day of September and the following first day of June.

3. The date of first public performance shall be the 1st day of September, 1923, or not later than fourteen days thereafter; employment herein shall begin upon the date of beginning of rehearsals, which date shall be not earlier than four weeks prior to the date of first public performance.

4. The Manager agrees, as compensation for services hereunder, to pay the Actor the sum of one hundred (\$100) dollars each and every week (on Saturday) commencing with the date of first public performance of the play, and continuing for and during the run of the production for which the Actor is engaged.

5. The Manager agrees and guarantees that under this contract he will give the Actor not less than ten (10) consecutive weeks'

⁵ Adapted from the "Run-of-the-Play Standard Contract" prepared and used by the Actors' Equity Association, New York City.

work, commencing with the date of the first public performance, and pay him therefor.

6. The Actor, if required, shall give four weeks' rehearsal without pay; if further rehearsals are required, then, for each additional week or part thereof, the Manager shall pay the Actor, on Saturday of that week, at the rate of the full salary mentioned in paragraph four.

Rehearsals shall be considered to be continuous from the date of the first rehearsal to the date of the first public performance of the play as provided in paragraph three.

If the above play is a musical play, or a spectacular production, then, wherever the word "Four" appears in this paragraph and in paragraph 3 the word "Five" shall be substituted.

7. The Manager shall give one week's notice of the closing of the production and company for which the Actor is engaged.

8. (a) The Actor shall furnish and pay for such clothes as are customarily worn by civilians of the present day in this country, together with wigs, boots and shoes necessarily appurtenant thereto. All other clothes, wigs, shoes, costumes and appurtenances (including those peculiar to any particular trade, occupation or sport) and all "properties" to be furnished by the Manager.

(b) If the Actor be a woman the Manager shall furnish and pay for all dresses, hats, appurtenances to costumes, and all "properties." Footwear and wigs for modern plays to be furnished by the Actress.

9. Eight performances shall constitute a week's work.

(a) Except as herein otherwise provided a week's salary shall be paid whether or not in any week eight performances are given. A sum equal to one-eighth of a week's salary shall be paid for each performance over eight in each week.

10. The Manager hereby agrees to transport at his expense the Actor when required to travel, including transportation from New York City to the point of opening, and back to New York City from the point of closing, also the Actor's personal baggage up to two hundred pounds weight. If the company is organized and its members are engaged outside of New York City, such place of organization is agreed to be substituted herein for "New York."

11. The Actor shall travel with the Company by such routes as the Manager may direct, and the Actor shall not demand com-

pensation for any performance lost through unavoidable delay in travel which prevents such performance by the Company.

12. It is further agreed if the Company cannot perform because of fire, accident, riot, act of God, the public enemy, or if the Actor cannot perform or rehearse on account of illness or any other valid reason, then the Actor shall not be entitled to any salary for the time during which said services shall not for such reason or reasons be rendered.

13. The Manager has the right during the season of 1919-1920 to lay off the Company without salary for the week before Christmas, and the week preceding Easter Sunday, or both weeks, if desired; thereafter these weeks shall be deemed to be played whether or not performances are given.

14. The Actor agrees to be prompt at rehearsals, to pay strict regard to make-up and dress, to perform the services herein required in a competent and painstaking manner, to abide by all reasonable rules and regulations, and to render services exclusively to the Manager from the date of beginning of rehearsals, and not to render services to any other person, firm or corporation without the consent of the Manager.

15. All communications which refer to the Company in general shall be posted upon the call-board. Notice to the Manager may be given to him personally or to the stage or company manager.

16. Lay-offs, unless caused through the fault of the Actor, shall not be counted as part of the guaranteed period.

17. If the blank in paragraph 5 is not filled in, and no guaranteed period is agreed upon, the Manager agrees that this contract shall call for a minimum guaranty of two weeks' employment from the date of first public performance.

18. The Manager agrees that all actors in the company in which the Actor is herein employed shall be and shall continue throughout such employment to be members in good standing of the Actors' Equity Association. This contract is subordinate to the obligations of the Actor herein to the A. E. A., of which obligations the Manager admits notice.

19. In event any dispute shall arise between the parties; (1) as to any matter or thing covered by this contract; (2) as to the meaning of the contract or its application to any state of facts which may arise—then said dispute or claim shall be arbitrated.

The Manager shall choose one arbitrator and the Actors' Equity Association the second. If within three days these arbitrators shall not be able to agree, then within that time they shall choose a third, who shall not in any way be connected with the theatrical profession.

If they fail to do so, John Smith, or his appointee shall be the third. The arbitrator shall hear the parties and within ten days decide the dispute or claim.

The decision of a majority of said arbitrators shall be the decision of all, and shall be binding, and said decision shall be final.

The arbitrators shall determine by whom and in what proportion the cost of the arbitration shall be paid. The parties hereby appoint said Board its agents, with full power to finally settle said dispute or claim and agree that its decision shall constitute an agreement between them, having the same binding force as if agreed to by the parties themselves.

IN WITNESS WHEREOF, we have hereunto set our hands the day and year first above written.

John Doe, Manager.

Henry Koe, Actor.

No. 291.

Agreement hiring chemist as consultant, whereunder chemist covenants to transfer to employer all discoveries relating to latter's business and whereunder chemist may act as consultant to those engaged in other lines of business.⁶

THIS AGREEMENT, made January 5, 1923, between Richard Roe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Doe Company, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party is a consulting chemist and expert in oil refining; and

WHEREAS, the Second Party is a manufacturer of crude corn oil:

⁶ Adapted from *Corn Products Refining Co. v. U. S.* (1919), 249 U. S. 631, 39 Sup. Ct. Rep. 291, 63 Law ed. 805.

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. The First Party agrees to serve the Second Party, and the Second Party hereby retains the First Party, as its consulting chemist and chemical adviser, on all questions, pertaining to corn oil, its method of extraction, uses, manufacture, special treatment, or preparation, and industrial application.

2. The First Party shall continue in New York City his laboratory experiments, researches and investigations in respect of the treatment, preparation and refining of corn oil, and covenants to give and transfer to the Second Party the exclusive use and benefit in the United States of all the results of his aforesaid experiments, searches, investigations, and discoveries, during the term of this contract.

3. The Second Party shall pay to the First Party the following compensation:

(a) The sum of three hundred (\$300) dollars a month, payable in advance on the first day of each month.

(b) An amount equal to one (1%) per cent of the proceeds of all corn oil refined and prepared, under processes, or methods, discovered by the First Party and sold by the Second Party, during the term of this contract; and payment for all such oil sold in each calendar month shall be made on the tenth day of the next succeeding month.

4. The First Party covenants not to act as consulting chemist, or chemical adviser, of any other corporation, or of any firm or individual, in the United States, engaged in the manufacture of refining corn oil, or in the manufacture of starch or glucose, or proposing to engage in such manufacture, or to enter into the employ of, or render any services to, or become, in any way, identified with any such corporation, firm, or individual; provided, however, that the First Party may act as consulting chemist, or in any other capacity, for any corporation, firm or individual not within the foregoing prohibition, and may engage in any business other than that of manufacturing, or refining, corn oil, or the manufacture of glucose, or starch.

5. This contract shall continue for a period of five (5) years from the date hereof.

IN WITNESS WHEREOF, the First Party has hereunto set his hand and seal, and the Second Party has caused this instrument to be signed by its President, thereunto duly authorized, and its corpo-

rate seal to be hereunto affixed, attested by its Secretary, the day and year first above written.

Richard Roe (L.S.).

Doe Company, Inc.,

By John Doe,

President.

(Seal)

Attest:

John Jones,

Secretary.

No. 292.

Agreement hiring designer, whereunder employee agrees to travel abroad.⁷

AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The First Party hereby hires the Second Party, and the Second Party hereby agrees to work for the First Party, as chief designer of the millinery department of the First Party, for a period of two (2) years, commencing March 10, 1923, at a salary of one hundred and fifty (\$150) dollars a week, payable at the end of each week.

2. The Second Party shall devote the whole of his time, attention and energy to the performance of his duties as such designer, subject to the direction of the First Party, and shall, in all respects, serve the Second Party diligently and to the best of his ability, and shall not represent, or in any way be connected, either directly or indirectly, with any other business, during the period of this agreement.

3. The Second Party shall make two trips to Europe, in each year, in the interest of the First Party, at such times as the First Party may designate; and the First Party shall pay and advance the amount of all passport fees, visé charges, tips, hotel and traveling expenses, which may be incurred by the Second Party in the course of such trips.

⁷ Adapted from *Inglezi v. Hickson, Inc.* (1921), 195 App. Div. 585, 186 N. Y. Supp. 846.

4. The Second Party shall be entitled, in each year, to four (4) weeks' vacation, with pay, at such time, or times, as the First Party shall determine; but the time spent in traveling abroad shall not be included in any such vacation period.

5. The Second Party covenants that, if he should leave the employment of the First Party, before the expiration of this contract, he will not, prior to March 9, 1925, engage, or take employment, in any millinery business located within the City of New York or the City of Boston.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of
John Jones.

No. 293.

Agreement hiring designer, with covenant to indemnify employee for breach of a prior contract of employment.⁸

THIS AGREEMENT, made January 5, 1923, between Doe, Inc., a corporation, duly organized under the laws of the State of New York and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party is engaged in the business of manufacturing shirt-waists, and the Second Party enjoys a reputation for being a competent and able designer of shirt-waists; and

WHEREAS, the First Party is desirous of procuring the services of the Second Party as a designer in its business:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. The First Party hereby employs the Second Party, and the Second Party hereby agrees to work for the First Party, as a designer of shirt-waists in the business of the First Party, for the period of one year from the date hereof, at a weekly salary of one hundred and fifty (\$150) dollars, which shall be paid to the Second Party at the end of each week.

⁸ Adapted from *Triangle Waist Co., Inc. v. Todd* (1918), 223 N. Y. 27, 119 N. E. 85.

2. The Second Party shall devote all of his time, attention, and best ability to designing shirt-waists for the First Party, and shall, at all times, perform his services as a designer in a reasonably competent manner.

3. That, as a part of the compensation for the faithful performance of this contract by the Second Party, the First Party shall, simultaneously with the execution of this agreement, execute and deliver to the Second Party, an agreement, wherein and whereby the First Party shall:

(a) Indemnify and hold harmless the Second Party from any and all claims and damages that have accrued, or that he may hereafter be obligated to pay, to the Koe Waist Co., a corporation organized under the laws of the State of New York, as the result of the Second Party's alleged breach of a certain contract of employment made by the Second Party with the said Koe Waist Co. on or about August 27, 1922; and

(b) Pay to the Second Party the salary hereinbefore provided for, during such period of time that the Second Party may be unable to perform the terms of this agreement, by reason of the service upon the Second Party of any injunction, or other restraining order, which the Koe Waist Co. may obtain, or cause to be obtained, under its said contract with the Second Party.

4. That no custom of trade shall affect this agreement, and that no modification, or addition, thereto shall be binding, unless the same shall be in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the First Party has caused this instrument to be signed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

Doe, Inc.,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

In the presence of
John Smith.

No. 294.

Agreement hiring driver and collector in laundry business, whereunder employee covenants, after termination of hiring, not to compete with, or disclose the names of the customers of the employer, or to solicit their business.⁹

AGREEMENT, made January 5, 1923, between Doe Laundry Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The First Party hereby employs the Second Party as a driver, collector, solicitor and canvasser in its laundry business, at a salary of twenty-five (\$25) dollars a week, payable at the end of each week, and at a commission of one (\$1) dollar for each new customer obtained by the Second Party for the First Party. That, for the purposes of this agreement, a "new customer" shall be one who, at no previous time, shall have been a customer of the First Party.

2. The Second Party hereby accepts the employment aforesaid, and agrees to perform his services to the best of his ability, and to comply with all the rules, orders and regulations, which the First Party may adopt, from time to time; and the Second Party further agrees to devote to such service as much time each and every day as the First Party may require, but not in excess of sixty (60) hours a week.

3. That this agreement may be terminated, at any time, by either party giving two weeks' notice to the other; and the payment, or tender, of a week's wages by the First Party to the Second Party shall be equivalent to a week's notice.

4. It is expressly agreed that, for a period of eighteen (18) months after the termination of this employment, for any cause whatsoever, the Second Party will not, directly or indirectly, as employer, employee, or otherwise, engage in the wet wash laundry

⁹ Adapted from *Eastern N. Y. Wet Wash Laundry v. Abrahams* (1916), 173 App. Div. 788, 106 N. Y. Supp. 69.

business, or in any business similar thereto, nor act in aid of the business of any rival, or competing, person, firm or corporation in the same, or a similar, business, within the Boroughs of Manhattan, Brooklyn and Queens, in the City of New York; and that the Second Party will not, at any time, disclose, or furnish, to any person, firm or corporation, other than the officers of the First Party, the names, or addresses, of any of the customers of the First Party; and that the Second Party will not, at any time, solicit, or canvass, the trade, or patronage, of the customers of the First Party, or collect, or deliver, laundry to any of them, for any other person, firm or corporation engaged in the wet wash laundry business, or in any similar business.

IN WITNESS WHEREOF, the First Party has caused this instrument to be signed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

Doe Laundry Co., Inc.,

By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

No. 295.

Agreement to hire general superintendent, upon a basis of salary and share of profits.¹⁰

AGREEMENT, made January 5, 1923, between Doe Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The First Party hereby hires the Second Party, and the Second Party agrees to work for the First Party, for the term of five

¹⁰ Adapted from *Heaphy v. Eidlitz* (1912), 197 App. Div. 455, 189 N. Y. Supp. 431.

years from the date hereof, as general superintendent of the First Party, and to perform such other duties, pertaining to the First Party's contracting and building business, as the First Party may direct.

2. That, during the term of this agreement, the Second Party shall devote his entire time and energy to the furtherance of the business of the First Party, under its direction, and shall not act in any advisory, or other capacity, for any individual, firm or corporation, other than for the First Party, in matters pertaining to the business of contracting, or building, or in the preparation of plans, or specifications, for buildings, or in making estimates of costs thereon, or in the superintendence, or erection, of the same, without first having obtained the written consent thereto of the First Party.

3. (a) That the First Party shall pay to the Second Party, for his services as aforesaid, the sum of twelve thousand five hundred (\$12,500) dollars, for the year commencing January 5, 1923, and ending January 4, 1924, and, during the succeeding four years, the sum of twelve thousand five hundred (\$12,500) dollars each year, plus ten (10%) per cent of the net profits of the said business of the First Party, which shall be determined as hereinafter provided.

(b) That the said yearly sum of twelve thousand five hundred (\$12,500) dollars shall be paid to the Second Party in equal monthly installments.

4. (a) That the net profits of the said business, for the period above mentioned, shall be determined, by deducting from the earnings of the First Party all expenses of any and every nature, together with all salaries paid to the officers of the First Party, not exceeding in any one year the sum of twenty-seven thousand (\$27,000) dollars.

(b) That the term "earnings of the First Party," as used in the preceding subdivision hereof, shall be such amounts as shall have been earned by and paid to the First Party, during the year preceding, for work actually performed on contracts, or jobs, and against which no claim shall have been made.

(c) That the determination of the amount of such net profits as made by the First Party, as well as their determination, calculation and apportionment, shall be final, conclusive and binding upon the Second Party; it being agreed that the Second Party shall

not, at any time, have the right to examine, or cause to be examined, the books, or records, of the First Party, for any reason whatsoever; and the said Second Party hereby, for himself, his heirs, executors and administrators, waives any and all right to examine such books, or records, or to cause the same to be examined.

5. That the death of the Second Party, prior to the expiration of this agreement, shall forthwith terminate this agreement; and in such event, an accounting of the amount due, up to the date of such death, shall be made to his personal representatives in the same manner as if the said date of death were the termination of the yearly period herein provided for; it being agreed, however, that such personal representative shall not have any access to, or right of examination of, the books, or records, of the First Party, and shall accept as final, conclusive, and binding, the determination of the First Party in respect of the amounts due hereunder, and that said personal representative shall have no other rights than those given to the Second Party hereunder.

IN WITNESS WHEREOF, the First Party has caused this instrument to be signed by its President, thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

Doe Co., Inc.,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

No. 296.

Agreement hiring hotel cook, upon a month to month basis, whereunder employee agrees to permit the employer to search his person and effects, and covenants not to join labor union or to strike.¹¹

THIS AGREEMENT, made January 5, 1923, between Doe Hotel Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 111½ Broad-

¹¹ Adapted from *Ressig v. Waldorf Astoria Hotel Co.* (1920), 229 N. Y. 553, 139 N. E. 912.

way, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That the First Party hereby employs the Second Party, and the Second Party agrees to work for the First Party, as a pastry cook, in its hotel at No. 11½ Broadway, Borough of Manhattan, New York City, from month to month, beginning February 1st, 1923 (unless otherwise terminated as hereinafter provided), at the monthly wages of one hundred (\$100) dollars.

2. That the Second Party shall strictly obey all rules and regulations of the First Party, whether now in force, or hereafter adopted; and the Second Party agrees that, at any time during the period of this agreement, the First Party may examine and search the person, trunk, clothing and effects of the Second Party, and the Second Party hereby waives all claims for damages on account of any such examination or search.

3. That the Second Party shall promptly deliver to the First Party any money, jewelry, and all other property, that the Second Party may find in the said hotel of the First Party.

4. That the Second Party hereby covenants that he will not become affiliated, as a member, or otherwise, with the Koe Hotel Workers Union, or with any other kindred organization, nor promote, aid, or participate, either directly or indirectly, in any strike against the said hotel, or the First Party.

5. That the First Party may terminate this agreement and discharge the Second Party, without previous notice; and, in such event, but in no other, the wages receivable by the Second Party shall be apportioned and paid to the Second Party, and the First Party shall, in addition thereto, pay to the Second Party one day's extra pay.

6. That the Second Party may terminate this agreement, at the end of any month, by giving notice in writing to the First Party of his intention to do so, at least eight (8) days prior to the end of any such month.

7. That the Second Party shall forfeit, as liquidated damages, all wages due to him, in the event of his failure to comply with any of the provisions of this agreement.

IN WITNESS WHEREOF, the First Party has caused this instru-

ment to be signed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

Doe Hotel Company, Inc.,

By John Doe,

President.

(Seal)

Attest:

John Jones,

Secretary.

Richard Roe (L.S.).

No. 297.

Agreement hiring manager of branch office to sell securities.¹²

AGREEMENT, made January 5, 1923, between John Doe, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The First Party hereby hires the Second Party, and the Second Party hereby agrees to work for the First Party, as sales manager, in the First Party's business of selling securities.

2. The First Party shall, at its own expense, maintain an office for the use of such sales manager, at No. 11½ Broadway, Borough of Manhattan, New York City, or in any other building in such city that the First Party may hereafter select.

3. The First Party shall pay the cost of stenographic hire, telephone service, literature, and any other incidental expense, which may be incurred in the maintenance of any such office for the use of such Second Party. But the Second Party shall, at his own expense, hire and pay any and all salesmen used in and about such office; and the Second Party agrees to hire and employ a force of not less than five (5) salesmen.

¹² Cf. *Von Heyne v. Tompkins* (1903), 89 Minn. 77, 93 N. W. 901, 5 L. R. A. (N. S.) 524.

4. (a) The First Party shall pay to the Second Party thirty (30%) per cent of the amount of installment sales of syndicate certificates for stock of the Doe Petroleum Company, which shall be effected by the Second Party, or by salesmen hired and paid by him; and the First Party agrees to pay to the Second Party thirty-five (35%) per cent of the amount of cash sales of syndicate certificates for stock of the Doe Petroleum Company, which shall be effected by the Second Party, or by salesmen hired and paid by him.

(b) The First Party shall pay to the Second Party an amount equal to fifty (50%) per cent of all commissions, arising out of the purchase, or sale, of other securities, effected by the Second Party, or by salesmen hired and paid by him.

5. The Second Party shall sell, or deal, only in such securities, as the First Party shall, from time to time, designate, and only at such prices, and upon such terms and conditions, as the First Party may fix therefor. No order, or offer, in respect of any securities shall be binding upon the First Party, until the same shall have been accepted by the First Party.

6. The Second Party shall daily report in writing to the First Party any and all orders, or offers, in respect of any securities received by the Second Party, and shall daily forward to the First Party all orders, or applications, received by such Second Party, together with all moneys received for, or on account of, or in connection with, the same, or otherwise; and the First Party shall pay to the Second Party on Saturday of each week all commissions, or earnings, then due and payable to the Second Party.

7. The Second Party agrees to devote all of his time and attention to the business of the First Party, during the period fixed for the duration of this contract; and such Second Party shall not, either directly or indirectly, engage in, or be employed in, or about, the buying, selling or dealing in and with securities of any kind or nature, during the period fixed for the duration of this agreement, except for the First Party; and the Second Party shall not, at any time, disclose, or furnish, the names, or addresses, of any customers of the First Party to any person, firm or corporation, other than the First Party, and shall, at no time, solicit or canvass the trade, business or patronage of customers of the First Party, for his own account, or for the account of any person, firm

or corporation engaged in the business of selling securities, or in any similar business, other than for the First Party.

8. That, as it is impossible to estimate, or determine, the damage that would be suffered by the First Party, in the event of a breach by the Second Party of the terms, provisions and covenants contained in the preceding paragraph, the Second Party shall pay to the First Party the sum of two thousand (\$2,000) dollars, as liquidated damages to compensate the First Party, in the event of any such breach by the Second Party.

9. This agreement shall commence on the date hereof, and shall continue for one year thereafter.

IN WITNESS WHEREOF, the First Party has caused this instrument to be signed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

John Doe, Inc.,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

In the presence of
John Smith.

No. 298.

Agreement hiring salesman for specific territory, upon a commission basis, under which employer agrees to make advances and pay traveling expenses against commissions.¹³

AGREEMENT, made January 5, 1923, between Doe, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

¹³ Adapted from *Booth v. New Process Cork Co.* (1921), 196 App. Div. 376, 187 N. Y. Supp. 725.

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The First Party hereby hires the Second Party, and the Second Party hereby agrees to work for the First Party, as a salesman of crown seals, cork discs and other products manufactured by the First Party, and of such other articles as the First Party shall deem necessary to assist it in the sale of its products, in the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and in the cities of Newark, Jersey City and Paterson, in the State of New Jersey.

2. (a) The Second Party shall devote all of his time, attention and energy to the performance of his duties as such salesman, subject to the direction and control of the First Party, and shall serve the First Party diligently and to the best of his ability, and, in all respects, shall make every effort to procure orders in all parts of the said territory, and shall, to the best of his ability, adjust any complaints, or disputes, which may arise in connection with any orders obtained in said territory.

(b) The Second Party shall not, either directly or indirectly, represent, or be employed by, any other person, firm or corporation, during said period, unless the consent thereto in writing of the First Party shall have been first obtained by the Second Party.

3. The Second Party shall sell all of said merchandise, at such prices as shall be fixed therefor by the First Party; and the First Party agrees that such prices shall not differ materially from the prices at which similar goods shall be sold by its competitors.

4. (a) That the First Party shall pay the following rate of commissions:

(1) One (1¢) cent per gross on orders for crown seals taken by the Second Party, and one (1¢) cent per gross, on orders for crown seals received from customers, or others, in said territory, upon whom the Second Party may have called in person, provided, however, that the Second Party shall have duly notified the First Party in writing of such call.

(2) Five (5%) per cent of the selling price, on all orders for Doe Discs for crown caps, received from manufacturers of crown caps, or others, upon whom the Second Party may have called in person, provided, however, that the Second Party shall have duly notified the First Party in writing of such call.

(3) That the commissions herein provided for shall not become

due, or owing, to the Second Party, until the goods ordered shall have been paid for by the respective customers.

(b) That all orders taken, or received, shall be subject to acceptance by the First Party.

5. (a) That the First Party shall allow the Second Party a drawing account of sixty (\$60) dollars a week, which shall be deducted from his commissions, and shall pay all traveling expenses incurred by the Second Party, while traveling outside of the State of New Jersey. The amount of such drawing account shall be paid to the Second Party, on Thursday of each week.

(b) The First Party shall pay, on demand, so much of the aforesaid commissions in excess of five hundred (\$500) dollars as may be due to the Second Party, on August 1st, November 1st, February 1st, and May 1st, of each and every year.

6. The First Party shall keep an accurate account of all orders taken by the Second Party and of all other orders received from his territory, and shall deliver to him a statement of such account on August 1st, November 1st, February 1st, and May 1st, in each year.

7. This agreement may be cancelled, by either party giving to the other sixty (60) days' notice in writing of such election to terminate; and, in the event of the termination of the employment under this clause, the Second Party shall receive commissions on all orders obtained by him, prior to the date of the termination of the employment, as and when the goods ordered thereunder shall have been delivered and paid for.

IN WITNESS WHEREOF, the First Party has caused this instrument to be signed by its President, thereunto duly authorized, and its corporate seal to be hereunto affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

Doe, Inc.,
By John Doe,
President.

(Seal)

Attest:

John Smith,
Secretary.

Richard Roe (L.S.).

No. 299.**Same—another form.¹⁴**

AGREEMENT, made this 5th day of January, 1923, between Doe, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "Employer"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Salesman"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That the Employer hereby hires the Salesman, and the Salesman agrees to work for the Employer, as a traveling salesman of the cloaks and suits manufactured by the Employer, for the period of one year from the date hereof.

2. That the salesman shall travel and sell the cloaks and suits of the Employer only to persons, firms and corporations engaged in business in the States of Ohio, Indiana, Illinois and Michigan; and that the Salesman shall not, during the continuation of this agreement, aid, work for, or sell the products of any other person, firm or corporation, without first obtaining the consent, in writing, of the Employer.

3. That, during the term of this agreement, the Employer shall neither hire, employ, nor engage, any other person, or persons, to travel for it, or in its behalf, as a salesman of its cloaks and suits, in the States of Ohio, Indiana, Illinois and Michigan, without first obtaining the consent, in writing, of the Salesman.

4. That the Employer shall, at its own cost and expense, furnish the Salesman with samples of the cloaks and suits to be sold by him; and the Salesman shall return such samples in as good condition as when received by him, reasonable wear, resulting from their proper use, excepted.

5. That the Employer shall pay the traveling expenses incurred by the Salesman, to the extent of, but not exceeding, the sum of one hundred (\$100) dollars in any one week.

6. That the Employer shall advance to the Salesman the sum of

¹⁴ Cf. *Northwestern Mutual Life Ins. Co. v. Mooney* (1888), 108 N. Y. 118, 15 N. E. 303; *L. J. Wing Mfg. Co. v. Thompson* (1909), 120 N. Y. Supp. 50.

one hundred and fifty (\$150) dollars on Saturday of each and every week, during the term of this agreement.

7. That the aforesaid traveling expenses and advances shall be charged to, and deducted from, the commissions of the Salesman, which shall be computed as hereinafter set forth.

8. That the Employer shall pay to the Salesman, as commission, a sum equal to seven and one-half ($7\frac{1}{2}\%$) per cent of the amount of all orders for cloaks and suits received by the Employer by, or through, the efforts of the Salesman.

9. That the Employer shall pay to the Salesman a sum equal to five (5%) per cent of the amount of all re-orders of cloaks and suits received by the Employer, as the result of sales originally made by, or through, the Salesman.

10. That the Salesman shall receive no commission, or commissions, for any sale, or sales, which may, or shall be made, during the term of this agreement, to the following persons, firms or corporations, engaged in business in the territory herein assigned to the Salesman, viz.:

John Jones Co., of Chicago, Ill.

Smith Brown & Co., of Indianapolis, Ind.

Thomas Clarke, of Cleveland, Ohio.

11. That there shall be an accounting and settlement between the Employer and the Salesman every six months.

IN WITNESS WHEREOF, the Employer has caused this instrument to be signed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, and the Salesman has hereunto set his hand and seal, the day and year first above written.

Doe, Inc.,

By John Doe,

President.

(Seal)

Attest:

Henry Koe,

Secretary.

Richard Roe (L.S.).

No. 300.

Same—another form, whereunder employer agrees to loan weekly sums to employee, who agrees to repay same on demand.¹⁵

AGREEMENT, made January 5, 1923, between Doe Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Manufacturer"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Salesman"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That the Manufacturer hereby hires the Salesman to sell, and the Salesman hereby agrees to work for the Manufacturer in selling, its coats and suits in the States of New York, Pennsylvania and Ohio.

2. That the Manufacturer shall, at its own cost and expense, supply the Salesman, for use in discharging his duties hereunder, with samples of its coats and suits; that such samples shall, at all times, continue to be the property of the Manufacturer, and shall be delivered to the Manufacturer immediately upon its demand therefor, or, in the absence of a prior demand, at the end, or other termination, of this agreement; and that such samples shall be so returned in as good condition as when the same were received by the Salesman, apart from reasonable tear and depreciation resulting from their proper use.

3. That the Manufacturer shall direct the time, or times, when the Salesman shall travel in the aforesaid territory herein assigned to the Salesman, and shall, also, determine the duration of his trips therein, and the route, or routes, over which the Salesman shall travel.

4. That the Salesman, while traveling outside of New York City, shall daily notify the Manufacturer in writing of the names and addresses of all persons, firms or corporations whom he may have visited, and the results of each such visit; and shall, with such

¹⁵ Cf. *Kenner v. Southwestern Oil Co.* (1904), 113 La. 80, 36 So. 895; *Milligan v. Sligh Furniture Co.* (1897), 111 Mich. 629, 70 N.W. 133; *Sabin v. Kendrick* (1901), 58 App. Div. 108, 68 N. Y. Supp. 546.

report, send to the Manufacturer any and all orders procured by him.

5. That the Manufacturer may:

- (a) refuse, or reject, any order, for good cause;
- (b) cancel any order, either in whole or in part, after the acceptance thereof;
- (c) consent to a cancellation of any order, either in whole or in part, either before or after the shipment of the merchandise;
- (d) accept any and all returns of merchandise made by customers; and
- (e) grant such allowances to any customers as it shall deem reasonable.

6. That the Manufacturer shall ship not less than ninety (90%) per cent of the total amount of the orders procured by the Salesman and accepted by it; and the Manufacturer shall pay to the Salesman a commission of seven and one-half (7½%) per cent of the amount of all moneys received by the Manufacturer for any merchandise shipped upon any orders procured by the Salesman, and a like amount of commission upon any further merchandise ordered by the customers of the Salesman during the term of this agreement.

7. That the commissions earned hereunder shall be payable to the Salesman semi-annually, after deducting therefrom the amount of all loans then due to the Manufacturer from the Salesman.

8. That the Manufacturer shall loan to the Salesman the sum of one hundred (\$100) dollars a week, for a period of four weeks from the date hereof, and for such further period as the amount of commission credited to the Salesman shall exceed the whole amount of such loans; and the Salesman, upon demand, shall repay such loans to the Manufacturer.

9. That the Salesman shall not, during the term of this agreement, either directly or indirectly, sell, or offer to sell, the coats and suits of any person, firm or corporation, other than the Manufacturer.

10. That this agreement shall commence on the date hereof, and shall continue for one year thereafter; provided, however, that the Manufacturer shall have the right to terminate this agreement, within one week after April 4th, 1923, if the Salesman shall not have obtained and delivered to the Manufacturer, on or before

April 4, 1923, orders from customers within his territory, aggregating in amount at least ten thousand (\$10,000) dollars.

IN WITNESS WHEREOF, the Employer has caused this instrument to be signed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, and the Salesman has hereunto set his hand and seal, the day and year first above written.

Doe Co., Inc.,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

No. 301.

Agreement hiring silk finisher, whereunder the employee agrees to perform his work in a manner satisfactory to the employer and his customers.¹⁶

AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The First Party hereby employs the Second Party, and the Second Party agrees to work for the First Party, as a silk finisher in the business of the First Party.

2. The Second Party shall, in accordance with the orders and directions of the First Party, devote all his knowledge, skill, and working time, solely and exclusively, to the business and interests of the First Party, and shall execute his work to the satisfaction of the First Party and his customers, and shall not, during the term of this agreement, either directly or indirectly, enter into any business, or employment, with, or for, any other person, or persons, corporation or corporations.

3. The working hours of the Second Party, shall be from 8.30

¹⁶ Adapted from *Messmer v. Boettger Silk Finishing Co.* (1914), 160 App. Div. 519, 145 N. Y. Supp. 560.

A.M. to 6.00 P.M. on each week day, except Saturday; and, on Saturday, such working hours shall be from 8.30 A.M. to 1.00 P.M.

4. The First Party shall pay the Second Party, as compensation for his services as aforesaid, the sum of one hundred and fifty (\$150) dollars a week, at the end of each week, during the first year, and the sum of two hundred (\$200) dollars a week, at the end of each week, during the second year, of this agreement.

5. It is expressly agreed that, if the work of the Second Party shall not be performed in a manner satisfactory to the First Party, or to the customers of the First Party, that then, and in such event, the First Party shall have the right, at any time, during the period of this agreement, to discharge the Second Party; and, upon such discharge, the First Party shall be released of all further obligations, or liabilities, hereunder.

6. That this agreement shall begin on the date hereof, and shall, except as herein otherwise provided, terminate on January 4, 1925.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

SECTION 2.—MISCELLANY.

No. 302.

Agreement terminating agreement of employment, with mutual release.¹⁷

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the said parties heretofore entered into a contract, dated September 5, 1922, whereunder the First Party agreed to work for the Second Party for a period of one year from September 5, 1922; and

WHEREAS, the First Party is unwilling to continue in the em-

¹⁷ *Cf. Martin v. New York Life Ins. Co.* (1895), 148 N. Y. 117, 42 N. E. 516.

ploy of the Second Party, and has requested the Second Party to cancel the said agreement:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the said contract hereby is cancelled, without further liability to either party as against the other.

2. That the First Party hereby acknowledges the receipt from the Second Party of the sum of five hundred (\$500) dollars, in full payment of all services performed by the First Party for the Second Party, under the said contract, or otherwise.

3. That each party hereby releases and forever discharges the other party from all moneys, claims, demands, contracts and actions whatsoever, up to, and including, the date hereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

No. 303.

Clause making certificate of employer's accountant conclusive in ascertaining employee's share of profits.¹⁸

The certificate of the Employer's accountant, or accountants, specifying, under his, or their, hand and seal, the amount of net profits earned in the Employer's business during the year, shall be accepted by each of the parties as conclusive evidence of the amount of the net profits in which the Employee is, as herein provided, entitled to share.

No. 304.

Clause permitting employer to transfer agreement of hiring to corporation acquiring his business.¹⁹

That, if the Employer shall sell, assign or transfer his business to any corporation and shall become the owner of not less than seventy-five (75%) per cent of its authorized capital stock, then, and in such event, the Employer shall have the right to assign

¹⁸ Cf. *U. S. v. Gleason* (1900), 175 U. S. 588, 20 Sup. Ct. Rep. 588, 44 Law ed. 284.

¹⁹ Cf. *Kessler v. Chappelle* (1902), 73 App. Div. 447, 77 N. Y. Supp. 287; *Griffin v. Brooklyn Ball Club* (1902), 68 App. Div. 566, 73 N. Y. Supp. 864.

all of his right, title and interest in this contract to such corporation, provided, however, that such corporation shall assume and agree to perform, from and after the date of such assignment, all the terms, provisions and agreements thereof, with the same force and effect as if such corporation had originally been the Employer hereunder; and, in the event of such assignment by the Employer and of such assumption and agreement by the corporation, all further rights, as well as all further obligations, of the Employer under this agreement shall forthwith cease and terminate.

No. 305.

Clause prohibiting employee from disclosing employer's trade secrets or working for others.²⁰

It is agreed that the First Party will not, directly or indirectly, furnish, or divulge, the names of any customers of the Second Party, or of any prospective customers of the Second Party, or of any persons who have heretofore traded and dealt with the Second Party, nor will he, at any time during the life of this contract, or at any time in the future, disclose, or furnish, to any other person, firm, or corporation, the methods of conducting the business of the Second Party, or the manner in which the Second Party packs its goods, nor will he furnish to any person, firm or corporation a description of any of the methods of obtaining business, or of packing goods, or of advertising the same, or of obtaining customers therefor, or, the manner, or process, of manufacture of any of the articles made by the Second Party, or of the processes which enter into the manufacture of the same, or disclose to any person, firm, or corporation any information obtained by the First Party, during the course of said employment; and that the First Party will not, after working hours, or at any other time, or place, engage in conversation with other employees of the Second Party, concerning the articles manufactured by the Second Party, or any of the processes by, or through, which, the same are made, and further, that the First Party will not, for a period of eight years, from the expiration of this contract of employment, or during the term thereof, enter the employ of any competitor, or of any person, firm or corporation handling, or manufacturing, in the State of

²⁰ Adapted from *Clark Paper & Mfg. Co. v. Stenacher* (1919), 177 N. Y. Supp. 614.

New York, the same line of goods as the Second Party; and it is further agreed that the First Party will not, at any time referred to in this agreement or at any future time, disclose any of the processes used by the Second Party in the manufacture of any of the articles manufactured or sold by it, no matter from whom or in what manner the First Party may have acquired such information.

No. 306.

Clause terminating contract of hiring, upon destruction or injury by fire of employer's factory or office.²¹

That, if the factory, or office, of the Employer shall be destroyed by fire, or shall be so damaged by fire that the Employer shall be unable to resume the customary conduct or transaction of his business therein, within a period of four weeks after the occurrence of such fire, then, and in such event, this contract shall cease and terminate as of the date of such fire, and each of the parties hereto thenceforth shall be released and discharged of, and from, all and singular their promises, agreements and covenants hereunder.

²¹ *Cf. Madden v. Jacobs* (1901), 52 La. Ann. 2107, 28 So. 225, 50 L. R. A. 827.

CHAPTER XV

MORTGAGOR AND MORTGAGEE

Section 1.—Mortgages Relating to Personal Property.

No. 307—Mortgage of chattels.

No. 308—Mortgage of chattels, leasehold and liquor licenses to secure existing and future indebtedness, payable on demand, whereunder mortgagee, upon default, may obtain appointment of receiver, take possession of, sell, or take title to, the mortgaged property.

Section 2.—Mortgages Relating to Real Property.

No. 309—Mortgage—statutory form.

No. 310—Mortgage to be executed by corporation, or individual—long form.

No. 311—Trust mortgage of leasehold estate and building to be erected thereon, to secure issue of first mortgage six per cent gold bonds of different maturities, redeemable, as a whole or in part, upon any interest date, upon thirty days' notice, at a premium of 2%, whereunder mortgagor covenants to erect building in accordance with specified plans, to pay interest on bonds without deduction of federal income tax up to 4%, and monthly to deposit specific sums for amortization of issue.

Section 3.—Miscellany.

No. 312—Agreement to execute adjustment mortgage to secure issue of 7% adjustment mortgage gold bonds, upon obtaining consent of stockholders, whereunder railroad company agrees to offer the same for sale to its stockholders, and syndicate, in return for commission, is formed to underwrite the issue.

- No. 313—Agreement extending time for payment of mortgage, whereunder mortgagor agrees to reduce principal.
- No. 314—Agreement of participation in a mortgage.
- No. 315—Agreement subordinating existing mortgage to new mortgage—official form.
- No. 316—Bond to be secured by real estate mortgage—official form.
- No. 317—Owner's estoppel certificate—official form.
- No. 318—Release of part of mortgaged premises—statutory form.
- No. 319—Satisfaction of mortgage—statutory form.
- No. 320—Certificate of mortgagee of amount due and unpaid on chattel mortgage.
- No. 321—Clause accelerating maturity of principal, upon altering building, without consent of mortgagee.
- No. 322—Clause accelerating maturity of principal of subordinate mortgage, upon default in interest, or foreclosure, of prior mortgage.
- No. 323—Covenant providing mortgagees shall hold as joint tenants.
- No. 324—Covenant giving mortgagee option, upon request of mortgagor, to satisfy mortgage and make a larger loan to be secured by new mortgage, or mortgages.
- No. 325—Reservation by mortgagor to cut standing timber.

SECTION 1.—MORTGAGES RELATING TO PERSONAL PROPERTY.

No. 307.

Mortgage of chattels.¹

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Mortgagor"), for securing the payment of the indebtedness hereinafter mentioned, and in consideration of the sum of one (\$1) dollar to me duly paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Mortgagee"), before the ensealing and delivery of these presents,

¹ Cf. *Crowley v. Langdon* (1901), 127 Mich. 51, 86 N.W. 391; *Barrett Mfg. Co. v. VanRunk* (1914), 212 N.Y. 90, 105 N.E. 811; *Oppenheimer v. Moore* (1901), 107 App. Div. 301, 95 N.Y. Supp. 138.

the receipt whereof is hereby acknowledged, do hereby grant, bargain and sell unto the said Mortgagee the certain mahogany desk and all other goods and chattels mentioned in the schedule hereto annexed, which are now in the premises No. 11½ Broadway, Borough of Manhattan, New York City,

TO HAVE AND TO HOLD, all and singular the aforesaid goods and chattels unto the said Mortgagee, his executors, administrators and assigns forever.

And I, the said Mortgagor, for myself, my heirs, executors, administrators and assigns, shall and will warrant and forever defend all and singular the aforesaid goods and chattels above bargained and sold, unto the said Mortgagee, his heirs, executors, administrators and assigns, against the said Mortgagor, and against all and every person or persons whomsoever.

UPON CONDITION, that if I, the said Mortgagor, shall and do well and truly pay unto the said Mortgagee, his heirs, executors, administrators or assigns, the just and full sum of five hundred (\$500) dollars, with interest thereon from January 5th, 1923, within ninety (90) days after the date hereof, then these presents shall be void.

AND I, the said Mortgagor, for myself, my heirs, executors, administrators and assigns, do covenant and agree to and with the said Mortgagee, his heirs, executors, administrators and assigns, that, in case default shall be made in the payment of the said sum above mentioned, or any part thereof, or if the said Mortgagee, at any time, shall deem himself to be unsafe or unsecure, then it shall and may be lawful for, and I, the said Mortgagor, do hereby authorize and empower the said Mortgagee, his executors, administrators and assigns, with the aid and assistance of any person, or persons, (1) to enter any dwelling house, store and other premises, and such other place, or places, as the aforesaid goods or chattels are, or may be, placed in, and (2) take and carry away the aforesaid goods or chattels, and (3) to sell and dispose of the same at public, or private, sale for the best price that can be obtained, and, (4) out of the moneys arising therefrom, to retain and pay the said sum above mentioned, and interest, and all charges touching the same, (5) rendering the overplus (if any) unto me, or to my heirs, executors, administrators or assigns; but, if the moneys arising therefrom, as aforesaid, shall be insufficient to pay the said sum above mentioned, interest, and all charges touching the same, I, the said

Mortgagor, for myself, my heirs, executors, administrators or assigns covenant and agree to pay the resulting deficiency to the Mortgagee, his executors, administrators and assigns.

AND, until default shall be made in the payment of the said sum of money, I, the said Mortgagor, may and shall continue in the quiet and peaceable possession of the said goods and chattels, and the full and free enjoyment of the same.

AND I, the said Mortgagor, covenant and agree that I shall, and will, keep the goods and chattels above bargained and sold insured against loss and damage by fire, in insurance corporations, in an amount approved by the Mortgagee, and shall and will assign the policy and certificates thereof to the said Mortgagee; and, in default thereof, it shall be lawful for the said Mortgagee to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the goods and chattels above bargained and sold, and shall be added to the amount of the debt, and secured by these presents, and payable on demand, with interest at the rate of six (6%) per cent per annum.

IN WITNESS WHEREOF, I, the said Mortgagor, have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

[Annex Schedule of Property.]

No. 308.

Mortgage of chattels, leasehold and liquor licenses to secure existing and future indebtedness, payable on demand, whereunder mortgagee, upon default, may obtain appointment of receiver, take possession of, sell, or take title to, the mortgaged property.²

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Mortgagor"), for securing the payment of the money hereinafter mentioned, and in consideration of the sum of one (\$1) dollar, lawful money of the United States, duly paid by Roe & Co., Inc., a corporation, duly organized under the laws of the State of New

² Adapted from *Kelly v. Ruppert* (1916), 173 App. Div. 116, 159 N. Y. Supp. 366.

York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Mortgagee"), at, or before, the ensealing and delivery of these presents, and of other good and valuable considerations, the receipt whereof is hereby acknowledged, do hereby grant, bargain and sell unto the Mortgagee the fixtures, chattels and property mentioned in the schedule hereto annexed and hereby made a part hereof, which now are in the premises known as No. 11½ Broadway, Borough of Manhattan, New York City, and are now in the possession of the Mortgagor,

TOGETHER with (a) all of the leasehold interest, right, title and interest, and right of possession, owned, or claimed, by the Mortgagor in the premises hereinbefore mentioned, under a certain indenture of lease dated the 4th day of January, 1923, made by Henry Koe to the Mortgagor, for the term of five years from the 4th day of January, 1923, at the annual rental of two thousand (\$2,000) dollars, and recorded in the office of the Register of the County of New York in Section 8A, Liber 345a, at page 37, on January 4, 1923; and (b) any and all renewals and right of renewals thereof; and (c) the Liquor Tax Certificate issued by the Special Deputy Commissioner of Excise for the Borough of Manhattan, New York City, authorizing traffic in liquors, in, and upon, said premises; and (d) any and all other Liquor Tax Certificates issued by the said Special Deputy Commissioner of Excise, authorizing traffic in liquors, etc., upon said premises.

TO HAVE AND TO HOLD all and singular the said chattels, fixtures, property, lease, leasehold interest, renewals and right of renewal, right of possession, and liquor tax certificate and renewals of the same, above granted, bargained and sold, or intended so to be, unto the said Mortgagee, its successors and assigns, forever.

And the said Mortgagor, for himself, his heirs, executors and administrators, does hereby covenant and agree that the said Mortgagor shall and will forever warrant and defend the right, title and interest of the Mortgagee in and to all and singular the said chattels, fixtures, property, lease, leasehold interest, renewals and right of renewal, right of possession, and liquor tax certificates and renewals of the same, above granted and sold, or intended so to be, unto the said Mortgagee, its successors and assigns, against the said Mortgagor, and against all and every person and persons whomsoever.

UPON CONDITION, that, if the Mortgagor shall, and do, well and truly pay unto the said Mortgagee, its successors and assigns, the just and full sum of seven thousand (\$7,000) dollars, upon demand, and interest thereon, to be computed from the date hereof, at the rate of six (6%) per cent per annum, to be paid with the said principal sum when demanded, and, also, shall, and do, well and truly, pay all other indebtedness, which may hereafter be due, or become due, from the Mortgagor to the Mortgagee, for merchandise sold, or money loaned, or advanced, to, or for, the said Mortgagor, by the Mortgagee, or otherwise, then these presents shall be void, otherwise to remain in full force and effect.

And the said Mortgagor, for himself, his executors, administrators and assigns, does covenant and agree to and with the said Mortgagee, its successors and assigns, as follows:

(a) To pay to the Mortgagee the aforesaid sum of seven thousand (\$7,000) dollars, and interest, when due, and as the same becomes due, and to pay all other indebtedness, which may hereafter be due, or become due, from the said Mortgagor to the Mortgagee, for merchandise sold, or money loaned, or advanced, to, or for, the Mortgagor by the Mortgagee, or otherwise.

(b) To keep the chattels and property in this mortgage, and in the annexed schedule, set forth, insured against loss, or damage, by fire, in an amount approved by the Mortgagee, and, in default thereof, it shall be lawful for the Mortgagee to effect such insurance, and the premiums paid for effecting the same shall be a lien upon the said mortgaged chattels, fixtures, property, lease, lease-hold interest, renewals and right of renewal, right of possession, and liquor tax certificates and renewals of the same, added to the amount of the said mortgage, or obligation, and secured by these presents, and payable upon demand, with interest at the rate of six (6%) per cent per annum.

(c) That, in case default shall be made in the payment of the said sum above mentioned, or in any part thereof, or of any indebtedness secured hereby, or in case such chattels or fixtures, or any part thereof, shall be levied upon under process, or removed, or attempted so to be, from the place where the same now are, by any person, or, if the interest of the Mortgagor in the above described premises, or any part thereof, or his right of possession thereof, shall be transferred, or if proceedings shall be commenced to dispossess said Mortgagor, or if the said Mortgagee shall, at any

time, deem the above mentioned indebtedness, or the security herein provided therefor, unsafe, then it shall be lawful for, and the said Mortgagor does authorize and empower the said Mortgagee, or its successors and assigns, with the aid and assistance of any person or persons, to enter said saloon, dwelling house, store and premises, and such other place or places in which the said chattels and fixtures are, or may be placed, and to take exclusive possession thereof, and either to sell them, as well as the said lease, leasehold interest, renewals and right of renewal, right of possession, and liquor tax certificates and renewals of the same, or to take and carry away the said chattels and fixtures, and sell and dispose of the same, either at public or private sale, at such place, or places, as the said Mortgagee, its successors or assigns, may designate, for the best price that the said Mortgagee can obtain therefor; and, out of the moneys arising therefrom, to retain and pay the sum above mentioned, and interest, or so much thereof as may be unpaid, and all charges touching the same, and, also, all other indebtedness due, or to become due, from the Mortgagor to the Mortgagee, as aforesaid, rendering the overplus, if any, unto the said Mortgagor, or to his executors, administrators or assigns; it being covenanted and agreed that the said Mortgagee, or its successors and assigns, shall have the right, option and privilege, at any sale, or sales, of the property covered by this mortgage, which may hereafter take place, to bid upon and purchase the same, with the same right and freedom as though not a party to this mortgage.

(d) That, if, from any cause, said property shall fail to satisfy said debt, interest, cost, charges, etc., to pay the deficiency; and it is covenanted and agreed that judgment may be entered forthwith against the Mortgagor, for the said deficiency, without further notice to him, and the said Mortgagor hereby stipulates to be bound by the result of such sale as may be made in accordance herewith.

(e) That a sale of the chattels, fixtures, lease, leasehold interest, renewals and right of renewal, right of possession, and liquor tax certificates and renewals of the same, shall forever bar and foreclose the equity of redemption of the Mortgagor, in the said lease, leasehold interest, renewals and right of renewal, right of possession, and liquor tax certificates and renewals of the same, and chattels, property, and fixtures, and shall vest in the purchaser an absolute indefeasible title thereto, and the Mortgagor covenants, at all times, to warrant and defend such title, and to execute such

papers, as may be necessary to protect the same, whenever requested so to do.

(f) That, anything to the contrary herein notwithstanding, the Mortgagee shall be at liberty, immediately after any default in the performance of the covenants herein contained, upon a complaint filed, or upon any other proper proceeding being commenced for the foreclosure of this mortgage, to apply for, and the Mortgagee shall be entitled, as matter of right, without consideration of the value of the mortgaged property and lease held as security for the amount due to the Mortgagee, or of the solvency of any person, or persons, obligated for the payment of such amounts, without notice to any party to the action, the appointment, by any competent court, or tribunal, of a receiver of the said chattels, fixtures, lease, leasehold interest, renewals and right of renewal, right of possession, and liquor tax certificates and renewals of the same, with power to carry on and conduct the business in the said premises, and to sell the same, together with the good-will thereof, and with such other powers as may be necessary, and such receiver, after deducting all proper charges and expenses attending the execution of the said trust, shall, as receiver, apply the residue of the money received, to the payment and satisfaction of the amounts remaining secured hereby, or of any deficiency which may exist, after applying the proceeds of the sale of the said chattels, fixtures, lease, leasehold interest, renewals and right of renewal, right of possession, and liquor tax certificates and renewals of the same, to the payment of the amount due, including interest and the cost of foreclosure and sale.

And it is hereby mutually agreed that, until default shall be made in the payment of the sum of money, with interest, due, or to become due, to the Mortgagee, or, unless, in case of levy, removal, or attempted removal of any, or all, of said chattels, property, and fixtures, lease, leasehold interest, renewals and right of renewal, right of possession, and liquor tax certificates and renewals of the same, or any part thereof as aforesaid, or unless it shall be attempted to transfer possession of the premises covered by said lease, or any part thereof, or unless proceedings shall be commenced to dispossess the Mortgagor, or unless the Mortgagee shall deem the said indebtedness or security herein provided therefor unsafe, the Mortgagor may remain and continue in the quiet

and peaceful possession of the said premises, and the full and free enjoyment of the same.

IN WITNESS WHEREOF, the Mortgagor has hereunto set his hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Brown.

SECTION 2.—MORTGAGES RELATING TO REAL PROPERTY.

No. 309.

Mortgage—statutory form.³

THIS MORTGAGE, made the 5th day of January, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Mortgagor"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Mortgagee"), WITNESSETH:

That, to secure the payment of an indebtedness in the sum of ten thousand (\$10,000) dollars, lawful money of the United States, to be paid on the 5th day of January, 1928, with interest thereon to be computed from January 5th, 1923, at the rate of six (6%) per cent per annum, and to be paid semi-annually thereafter, according to a certain bond or obligation bearing even date herewith, the Mortgagor hereby mortgages to the Mortgagee all that certain lot, piece or parcel of land, with the buildings and improvements thereon made or erected, situate, lying and being in the Borough of Manhattan, City and State of New York, and bounded and described as follows:

BEGINNING * * *

And the Mortgagor covenants with the Mortgagee as follows:

FIRST. That the Mortgagor will pay the indebtedness as hereinbefore provided.

SECOND. That the Mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the Mortgagee.

THIRD. That no building on the premises shall be removed or demolished without the consent of the Mortgagee.

³ Adapted from *New York Laws 1917*, Ch. 681, Schedule M.

FOURTH. That the whole of said principal sum shall become due after default in the payment of any installment of principal or of interest for thirty (30) days, or after default in the payment of any tax, water rate or assessment for sixty (60) days after notice and demand.

FIFTH. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.

SIXTH. That the Mortgagor will pay all taxes, assessments or water rates, and in default thereof, the Mortgagee may pay the same.

SEVENTH. That the Mortgagor within thirty (30) days upon request by mail will furnish a statement of the amount due on this mortgage.

EIGHTH. That notice and demand or request may be in writing and may be served in person or by mail.

NINTH. That the Mortgagor warrants the title to the premises.

IN WITNESS WHEREOF, this mortgage has been duly executed by the Mortgagor.

Y

John Doe (L.S.).

In the presence of

John Jones.

No. 310.

Mortgage to be executed by corporation, or individual—long form.⁴

THIS MORTGAGE, made the 5th day of January, nineteen hundred and twenty-three, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "mortgagor"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "mortgagee").

WITNESSETH, that to secure the payment of an indebtedness in the sum of fifty thousand (\$50,000) dollars, lawful money of the United States to be paid on the 5th day of January, nineteen hundred and twenty-eight, with interest thereon, to be computed from January 5th, 1923, at the rate of six (6%) per cent per annum, and to be paid on the 5th day of July next ensuing the

⁴ Adapted from the form prepared and used by the Lawyers Title and Trust Company, New York City.

date hereof, and semi-annually thereafter, according to a certain bond or obligation bearing even date herewith, the mortgagor hereby mortgages to the mortgagee ALL that certain lot, piece, or parcel, of land, with all the buildings and improvements thereon made, or erected, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described, as follows:

BEGINNING * * *

AND the mortgagor covenants with the mortgagee as follows:

1. That the mortgagor will pay the indebtedness as hereinbefore provided.
2. That the mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the mortgagee.
3. That no building on the premises shall be removed or demolished without the consent of the mortgagee.
4. That the whole of said principal sum shall become due after default in the payment of any installment of principal or of interest for twenty days, or after default in the payment of any tax, water rate or assessment for sixty days after notice and demand.
5. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.
6. That the mortgagor will pay all taxes, assessments or water rates, and in default thereof, the mortgagee may pay the same.
7. That the mortgagor within six days upon request in person or within thirty days upon request by mail will furnish a statement of the amount due on this mortgage.
8. That notice and demand or request may be in writing and may be served in person or by mail.
9. That the mortgagor warrants the title to the premises.
10. That the whole of said principal sum shall become due at the option of the mortgagee after default for sixty days after notice and demand, in the payment of any installment of any assessment for local improvements heretofore or hereafter laid, which is or may become payable in annual installments and which has affected, now affects or hereafter may affect the said premises, notwithstanding that such installment be not due and payable at the time of such notice and demand.
11. That the whole of said principal sum shall become due at the option of the mortgagee, if the buildings on said premises are not maintained in reasonably good repair or upon the failure of

any owner of said premises to comply with the requirement of any department of the State or City of New York, within three months after an order making such requirement has been issued by any said State or City Department.

12. In the event of the passage after the date of this mortgage of any law of the State of New York, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for state or local purposes, or the manner of the collection of any such taxes, so as to affect this mortgage, the holder of this mortgage and of the debt which it secures, shall have the right to give thirty days' written notice to the owner of the mortgaged premises requiring the payment of the mortgage debt. If such notice be given the said debt shall become due, payable and collectible at the expiration of said thirty days.

13. That in case of a sale, said premises, or so much thereof as may be affected by this mortgage, may be sold in one parcel.

14. That the whole of said principal sum shall immediately become due at the option of the mortgagee, if the mortgagor shall assign the rents or any part of the rents of the mortgaged premises without first obtaining the written consent of the mortgagee to such assignment, or upon the actual or threatened demolition or removal of any building erected or to be erected upon said premises.

15. That the whole of said principal sum shall immediately become due at the option of the mortgagee upon any default in keeping the buildings on said premises insured against loss by fire as required by paragraph No. 2 above, or if upon application by any holder of this mortgage to two or more fire insurance companies lawfully doing business in the State of New York and issuing policies of fire insurance upon buildings situate in the place where the mortgaged premises are situate, the companies to which such application has been made shall refuse to issue such policies.

16. That the holder of this mortgage in any action to foreclose it, shall be entitled (without notice and without regard to the adequacy of any security for the debt) to the appointment of a receiver of the rents and profits of said premises.

17. That the whole of said principal sum shall immediately become due at the option of the holder of this mortgage after default in the performance of any of the terms, provisions, covenants, or agreements contained in any prior mortgage which

may be a superior lien upon said premises or should any action be commenced to foreclose any such prior mortgage.

18. That if default be made in the payment of any interest, when due, upon any prior mortgage which may be a superior lien upon said premises and the default continue for a period of ten days, the holder of this mortgage shall have the right to pay such interest, and the amount so paid with interest thereon may be added to the indebtedness secured hereby, and shall be a lien on said premises and be collected as part of the debt secured by this mortgage, and in the event of any such payment of interest this mortgage and the whole debt secured thereby shall, at the option of the holder thereof, without notice or demand, immediately become due and payable, although the time limited for the payment thereof may not have expired, and the said holder shall have the same rights and remedies as such holder would have if default were made in the payment of the principal sum hereby secured, anything herein or in said bond contained to the contrary notwithstanding.

19. That in the event of any default in paying said principal or interest, the rents and profits of the mortgaged premises are hereby assigned to the holder of this mortgage as further security for the payment of said indebtedness.

IN WITNESS WHEREOF, this mortgage has been duly executed by the mortgagor.

John Doe (L.S.).

In the presence of
Henry Koe.

No. 311.

Trust mortgage of leasehold estate and building to be erected thereon, to secure issue of first mortgage six per cent gold bonds of different maturities, redeemable, as a whole or in part, upon any interest date, upon thirty days' notice, at a premium of two per cent, whereunder mortgagor covenants to erect building in accordance with specified plans, to pay interest on bonds without deduction of federal income tax up to four per cent, and monthly to deposit specific sum for amortization of issue.⁵

THIS INDENTURE, made the 1st day of January, 1923, between Doe Corporation, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Company"), party of the first part, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Trustee"), party of the second part, WITNESSETH:

WHEREAS, the Company has full power and authority to borrow money, and to make and issue its bonds, and to secure the same by mortgage, pledge, or deed of trust, and to convey, by such mortgage, pledge, or deed of trust, any, or all, of its property, and has full power to execute and deliver this trust deed or mortgage and the temporary and permanent bonds secured hereby; and

WHEREAS, Roe & Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ William Street, Borough of Manhattan, New York City, has agreed to make, and the Company has agreed to take a loan of three million (\$3,000,000) dollars, to be used by the Company for its general purposes and for the erection and equipment of an office building, hereinafter described, the amount of which loan shall be advanced to the Company, from time to time, as provided for in said agreement; and

WHEREAS, said loan is to be evidenced by the bonds hereinafter described, which said bonds are to be delivered to said Roe & Co., Inc., forthwith upon execution, as hereinafter provided; and

⁵ Cf. *Jones v. Guaranty & Indemnity Co.* (1879), 101 U.S. 622, 25 Law ed. 1030; *Monmouth County Electric Co. v. McKenna* (1905), 68 N. J. Eq. 160, 60 Atl. 32; *Morgan Bros. v. Dayton Coal & Iron Co.* (1915), 134 Tenn. 228, 183 S. W. 1019.

WHEREAS, the Company is, accordingly, indebted in the sum of three million (\$3,000,000) dollars and has, pursuant to the resolutions of its Board of Directors and the due consent of more than two-thirds of its stockholders, to evidence said indebtedness, duly executed its temporary bond for the said principal sum, in accordance with the provisions hereinafter contained, and has agreed to execute, and has duly authorized the making and issuing of, its permanent and definitive coupon bonds as soon as they are prepared, amounting in the aggregate to said principal sum of three million (\$3,000,000) dollars, bearing even date herewith and payable to bearer, or to the registered owner, as hereinafter provided, and numbered consecutively from one to forty-five hundred and fifty-nine, both inclusive, a schedule of which bonds, showing the bond numbers, denomination, amount of principal, and dates of maturity, being, as follows:

<i>Numbers.</i>	<i>Denomination.</i>	<i>Amount.</i>	<i>When Due.</i>
1 to 20	\$500	\$10,000	January 1, 1926
21 to 110	1,000	90,000	January 1, 1926
111 to 140	500	15,000	January 1, 1927
141 to 231	1,000	91,000	January 1, 1927
232 to 272	500	20,500	January 1, 1928
273 to 364	1,000	92,000	January 1, 1928
365 to 410	500	23,000	January 1, 1929
411 to 506	1,000	96,000	January 1, 1929
507 to 558	500	26,000	January 1, 1930
559 to 658	1,000	100,000	January 1, 1930
659 to 717	500	29,500	January 1, 1931
718 to 821	1,000	104,000	January 1, 1931
822 to 884	500	31,500	January 1, 1932
885 to 994	1,000	110,000	January 1, 1932
995 to 1062	500	34,000	January 1, 1933
1063 to 1178	1,000	116,000	January 1, 1933
1179 to 1252	500	37,000	January 1, 1934
1253 to 1374	1,000	122,000	January 1, 1934
1375 to 1453	500	39,500	January 1, 1935
1454 to 1582	1,000	129,000	January 1, 1935
1583 to 1671	500	44,500	January 1, 1936
1672 to 1805	1,000	134,000	January 1, 1936
1806 to 1900	500	47,500	January 1, 1937
1901 to 2042	1,000	142,000	January 1, 1937
2043 to 2142	500	50,000	January 1, 1938
2143 to 2293	1,000	151,000	January 1, 1938
2294 to 2403	500	55,000	January 1, 1939
2404 to 2561	1,000	158,000	January 1, 1939
2562 to 2677	500	58,000	January 1, 1940
2678 to 2845	1,000	168,000	January 1, 1940
2846 to 2966	500	60,500	January 1, 1941
2967 to 3145	1,000	179,000	January 1, 1941
3146 to 4145	100	100,000	January 1, 1942
4146 to 4215	1,000	35,000	January 1, 1942

<i>Numbers.</i>	<i>Denomination</i>	<i>Amount.</i>	<i>When Due.</i>
4216 to 4334	\$500	\$119,000	January 1, 1942
4335 to 4419	1,000	42,500	January 1, 1943
4420 to 4559	()	140,000	January 1, 1943

and

WHEREAS, all of said bonds are to be signed by the President, attested by the Secretary, and sealed with the corporate seal of said Company, the said interest coupons to bear the facsimile lithographed signature of the Treasurer of said Company, to be payable in gold coin of the United States of America, of not less than the present standard of weight and fineness, and to bear interest, from and after the first day of January, 1923, at the rate of six (6%) per cent per annum, upon the presentation and surrender of the respective interest coupons as they, respectively, mature; and

WHEREAS, all of said bonds are to be subject to the privilege of prepayment and redemption, as provided in said bonds, and as hereinafter set forth, and each of said bonds shall have attached thereto coupons for the successive installments of interest, as aforesaid, the first of said installments of interest to fall due on July 1, 1923, and thereafter semi-annually on the first days of January and July of each year, until the maturity of said bonds; and

WHEREAS, all of said bonds shall have endorsed thereon the Trustee's certificate of identification, which bonds, coupons and Trustee's certificate shall be in substantially the following form and tenor, subject to the necessary variations as to number, denominations and maturity, to wit:

UNITED STATES OF AMERICA

STATE OF NEW YORK

ROE BUILDING

23½ WILLIAM STREET, CITY OF NEW YORK, N. Y.

First Mortgage Six Per Cent Serial Gold Bond

No.

\$

KNOW ALL MEN BY THESE PRESENTS that Doe Corporation, a corporation, duly organized under the laws of the State of New York (herein called the "Company"), acknowledges itself to owe, and for value received, promises to pay to bearer, or to the registered holder hereof, in case of registration,dollars, in gold coin of the United States of America, of not less than the present standard of weight and fineness, on the first day

of....., in the year A.D. 19.... (or sooner, as hereinafter provided), with interest on said sum, from and after the first day of January, A.D. 1923, at the rate of six (6%) per cent per annum, payable in like gold coin on the first day of July, 1923, and thereafter semi-annually on the first days of January and of July in each year, until the principal sum hereof shall be fully paid, but only upon presentation and surrender, as they shall severally mature, of the interest coupons hereto attached, and, if said principal sum shall not be paid when due, with interest upon said principal sum, after the maturity thereof, at the rate of six (6%) per cent per annum. Both principal and interest are payable in the manner more specifically described in the mortgage, or deed of trust, hereinafter referred to, in gold coin of the United States of America, of not less than the present standard of weight and fineness (notwithstanding any law, which may now, or hereafter, make anything else legal tender for the payment of debts), at the office of Roe & Co., Inc., in the City of New York, or at the office of Roe & Co., Inc., in the City of Chicago, and (in so far as the Company may now, or hereafter, legally so contract), without deduction for any lawful United States federal income taxes, assessments and charges, which the Company, the Trustee hereinafter mentioned, or said Roe & Co., Inc., may be required to pay thereon, or to deduct, or retain, therefrom, under, or by reason of, any present and future law, or laws, of the United States; and the Company agrees to pay to the Trustee, or Roe & Co., Inc., a sum equivalent to the amount of said taxes, assessments and charges so required to be deducted, and any such taxes, assessments and charges, which the holder hereof may, at the time of the payment of said interest, be liable to pay directly on account of the income represented by the interest on this bond, but the aggregate liability of the Company for such taxes, assessments and charges for any one year provided for by this paragraph shall not exceed four (4%) per cent of the amount of the annual interest, or income, on this bond.

This bond is one of a series of forty-five hundred and fifty-nine (4559) bonds numbered consecutively from one to forty-five hundred and fifty-nine, both inclusive, of like form, tenor and effect, except as to denomination, number and time of maturity thereof, amounting in the aggregate to the principal sum of three million (\$3,000,000) dollars; one thousand (1,000) of said bonds being for the principal sum of one hundred (\$100) dollars each; thirteen hundred and eighteen (1,318) of said bonds being for the principal sum of five hundred (\$500) dollars each, and twenty-two hundred and forty-one (2,241) of said bonds being for the principal sum of one thousand (\$1,000) dollars each; maturing one hundred thousand dollars (\$100,000) January 1, 1926; one hundred and six thousand dollars (\$106,000) January 1, 1927; one hundred and twelve thousand five hundred dollars (\$112,500) January 1, 1928; one hundred and nineteen thousand dollars (\$119,000) January 1, 1929; one hundred and twenty-six thousand dollars (\$126,000) January 1, 1930; one hundred and thirty-three thousand five hundred dollars (\$133,500) January 1, 1931; one hundred and forty-one thousand five hundred dollars (\$141,500) dollars January 1, 1932; one hundred and fifty thousand dollars (\$150,000) January 1, 1933; one hundred and fifty-nine thousand dollars (\$159,000) January 1, 1934; one hundred and sixty-eight thousand five hundred dollars (\$168,500) January 1, 1935; one hundred and seventy-eight thousand five hundred dollars (\$178,500) January 1, 1936; one hundred and eighty-nine thousand five hundred (\$189,500) dollars January 1, 1937; two hundred and one thousand dollars (\$201,000) January 1, 1938; two hundred and thirteen thousand (\$213,000) dollars January 1, 1939; two hundred and twenty-six thousand dollars (\$226,000) dollars January 1, 1940; two hundred and thirty-nine thousand five hundred dollars (\$239,500) January 1, 1941; two hundred and fifty-four thousand dollars (\$254,000) January 1, 1942; one hundred and eighty-two thousand five hundred dollars (\$182,500) January 1, 1943.

The payment of all of said bonds, as the said bonds shall be executed, certified and delivered, together with the interest thereon, is equally and ratably and without priority, or preference, of any bond over any other, by any reason whatsoever, secured by mortgage, or deed of trust, bearing even date herewith, made by the Company to Richard Roe as Trustee, and duly recorded in the office of the Register of the County of New York, to all of the provisions of which mortgage, or deed of trust, said bonds and the coupons thereof are hereby made subject, with the same effect as if the same were herein fully set forth. For a more particular description of the covenants of the Company, as well as a description of the mortgaged property, and of the nature and extent of the security, the rights of the holders of the bonds, and of the terms and conditions upon which the bonds are issued and secured, and the method of payment thereof, reference is made to said mortgage, or deed of trust.

This bond is issued and accepted by the holder hereof, subject to the payment, before maturity, upon any interest payment date, by payment of the full amount of the principal hereof, and of all interest accrued thereon to the date of redemption, and of said federal income taxes, if any, together with a premium of two (2%) per cent upon said principal, upon thirty (30) days' notice, in the manner and upon the terms set forth in said trust deed.

This bond shall pass by delivery, unless registered in the holder's name upon the books of said Richard Roe, Trustee and Registrar, or his successor in trust, as in said deed of trust provided, after which no transfer hereof shall be valid, unless made upon said books in the manner prescribed in said deed of trust and similarly noted on this bond; but the same may be discharged from registry by being transferred in like manner to bearer, and, thereafter, it shall be transferable by delivery, but again, from time to time, this bond may be registered and be transferred to bearer as before, but the coupons hereto attached shall always be transferable by delivery merely.

Neither this bond nor any of the coupons hereto attached shall be valid, until this bond shall be authenticated by the signature of said Trustee, Richard Roe, to the certificate endorsed hereon.

Said mortgage, or deed of trust, and this bond, as well as all of the other bonds aforesaid, are to be taken and considered together as parts of one and the same contract, and this bond and each coupon hereto attached are subject to all of the provisions of the said mortgage, or deed of trust, to the same extent as if said mortgage, or deed of trust, were herein fully set forth.

In case of default in the payment of interest, or of the principal of any of said bonds, or in case of default in the performance of any of the covenants, or conditions, in said mortgage, or deed of trust, the principal of this bond may become due and payable before its regular maturity, together with the interest accrued thereon, as provided in said mortgage or deed of trust.

IN WITNESS WHEREOF, the Company has caused these presents to be signed by its President, and its corporate seal to be hereunto affixed, and to be attested by its Secretary, and has caused said coupons, evidencing the interest hereon, to be hereto attached, and to be executed in its behalf by the lithographed facsimile signature of its Treasurer, this first day of January, A. D. 1923.

Doe Corporation

By.....
President.

Attest:

Secretary.

[Coupon.]

Roe Building

(23½ William Street, New York)

No.

\$

On the first day of....., 19...., Doe Corporation, a corporation, will pay to the bearer at the office of Roe & Co., Inc., at New York City, or at Chicago, Illinois,.....(....) dollars in gold coin of the United States of America, of not less than the present standard of weight and fineness, being six (6) months interest at the rate of six (6%) per cent per annum on its bond dated January 1, 1923, numbered.....and, if not paid when due, with interest on the amount of this coupon after its maturity at the rate of six (6%) per cent per annum.

City of New York, N. Y., January 1, 1923.

Doe Corporation,

By.....

Its Treasurer.

[Trustee's Certificate.]

This is to certify that this bond is one of the series of bonds described in the mortgage, or deed of trust, within referred to.

.....
As Trustee.

(Notice to Holder: Do not write on this bond. Consult the Trustee for method of transfer and registration.)

Date of Registry.	In Whose Name Registered.	Signature.
.....
.....
.....

and

WHEREAS, the written consent of the holders of more than two-thirds of the capital stock of the Company has been duly given to the execution and delivery of this indenture, and to the execution of said bonds, and a certificate, under the seal of the Company, that such consent was so given, has been subscribed and acknowledged by the President and Secretary of the Company, and is about to be filed and recorded simultaneously herewith in said office of the Register of the County of New York, in which county the Company has its principal place of business; and

WHEREAS, at a meeting duly called and held, the Board of Directors of the Company has duly authorized the issuance, execution and delivery of said bonds and of this indenture; and

WHEREAS, all things necessary to make said bonds, when duly authenticated by the Trustee, valid and legal obligations of the Company and to make this indenture valid, legal and binding for the purposes herein expressed, have been performed:

Now, THEREFORE, in consideration of the premises, and the purchase and acceptance of said bonds by the holders thereof, and

of the sum of One Dollar to it paid, in order to secure the payment of the principal and interest on said bonds, according to the terms thereof, and the performance and observance of each and every of the covenants and conditions herein, and in said bonds, contained, and to declare the terms and conditions upon which said bonds are issued, received and held, the Company, by these presents, does give, grant, bargain, sell, assign, alien, remise, release, mortgage, convey, pledge, warrant, confirm, transfer and set over unto Richard Roe, as Trustee, and to his successor, or successors, in trust forever,

Leasehold estate and term of years created by a certain indenture of lease executed on the first day of June, 1922, by and between Koe & Co., a domestic corporation, and Doe Corporation, a domestic corporation, wherein and whereby Koe & Co. has demised to Doe Corporation, for a term commencing on the first day of September, 1922, and ending on the 29th day of April, 1934, those certain lots, pieces and parcels of land in the County, City and State of New York, bounded and described, as follows:

BEGINNING * * *

TOGETHER with any and all buildings, improvements and appurtenances now standing, or, at any time, hereafter constructed, or placed, upon said land, or any part thereof, including all partitions, dynamos, motors, engines, boilers, furnaces, vacuum cleaning systems, fire prevention and extinguishing apparatus, heating, plumbing, ventilating, gas and electric light fixtures, elevators, vaults, machinery and appliances in any building now, or hereafter standing, on said premises, or any part thereof, and together with all the rents, issues and profits accruing, or to accrue, to the Company, which are hereby specifically assigned with the same force and effect as if each and all of the persons, who are now, or may hereafter become, tenants of said building under the Company were now known and herein expressly named, and, also, the second, or renewal, term to begin April 30, 1934, hereinafter more specifically referred to, and, also, all credits, deposits, options, privileges and rights of the Company, under and pursuant to the terms of said lease, and together with all and singular the tenements, hereditaments, easements, appendages and appurtenances to said estate and property belonging, or, in any wise, appertaining, and all the estate, right, title, interest, claim or demand whatsoever, of the Company, either in law, or in equity, in possession, or expectancy of, in and to the said lease and lands (except the last day of the

second term of said lease, which is specifically excluded from the terms hereof), all of which estate, property, interest and rights hereby conveyed, transferred, assigned, mortgaged, or pledged, or intended so to be, are hereinafter in this instrument sometimes referred to as the "premises."

TO HAVE AND TO HOLD the above granted premises unto the said Trustee, his successors and assigns forever.

IN TRUST, NEVERTHELESS, for the equal and proportionate benefit and security of all present and future holders of said bonds and coupons, without preference, priority, or distinction, except as provided in Article IX, Section 7, as to lien, or otherwise, of one bond over any other bond, or by reason of priority in the time of execution, issuance, negotiation, date of maturity thereof, or otherwise, and it being the further intent hereof that the lien and security of this indenture shall take effect upon the day of the date hereof, without regard to the time, or times, of any advance, or advances, of the money hereby secured.

And it is expressly covenanted and agreed that all of said bonds are to be issued, certified, delivered and negotiated, and that said premises are conveyed to, and are to be held and disposed of, by the Trustee, his successors and assigns, subject to the further covenants, conditions, provisions, uses and trusts herein set forth, that is to say:

ARTICLE I.

Issuance, Authentication, Negotiation and Registration of Bonds.

SECTION 1. (a) The Company covenants that, as soon as the permanent bonds to be secured hereby shall be ready, they shall be executed by it and delivered to the Trustee for certification, and be by him delivered in exchange for, and upon cancellation of, the temporary bond in Section 3 of this Article mentioned. Such bonds shall be of even date herewith, shall bear interest from January 1, 1923, at the rate of six (6%) per cent per annum, and shall be signed by the Company's President, and sealed with its corporate seal, attested by its Secretary. No bond shall be secured, or entitled to any benefit, or lien hereunder, unless authenticated by the certificate of the Trustee endorsed thereon, and every such certificate upon any such bond issued by the Company shall be con-

clusive evidence that such bond has been duly issued and is secured hereby.

(b) The coupons attached to the bond shall bear the facsimile of the signature of the present, or any future, Treasurer of the Company.

(c) Said bonds, coupons and Trustee's certificate shall be, substantially, of the respective forms, numbers, maturities and denominations above set forth.

SECTION 2. Any of said bonds signed by the proper officers, at the time of such signing, or any of such interest coupons, bearing the facsimile signature of any present, or future, Treasurer of the Company shall, notwithstanding any change of officers, prior to certification, or issue, bind the Company and be secured hereby, as if no such change had occurred.

SECTION 3. Pending the preparation of said permanent bonds, the Company has executed and delivered to the Trustee, and the Trustee has certified, a temporary bond for the principal sum of three million (\$3,000,000) dollars substantially of the tenor of said permanent bonds, which temporary bond has been redelivered to the Company and may by it be sold and negotiated. Such temporary bond shall be subject to all the terms and provisions hereof, and shall be exchangeable, without expense to the holder, for the permanent bonds when the same are ready, and, upon such exchange, said temporary bond shall be cancelled by the Trustee and delivered to the Company for destruction. Until so exchanged, it shall be entitled to the same security as said permanent bonds.

SECTION 4. There shall be kept, at the office of the Trustee, a register for the registration and transfer of said bonds in which the Trustee, upon payment of his reasonable charges, will register any such bond; and such registry shall be noted upon the bond by the Trustee, and, thereupon, no transfer thereof shall be valid, unless made upon said register, by the owner in person, or by attorney duly authorized, and similarly noted upon the bond; but the same may be discharged from registration by being, in like manner, transferred to bearer, and, thereupon, transferability by delivery shall be restored; but the bond may again, from time to time, be registered, or transferred to bearer, as before. No such registration shall affect the negotiability of the coupons, which shall always be transferable by delivery merely. The holder of any of said bonds, which shall not, at the time, be registered, and the holder of any coupon,

shall be deemed the owners, respectively, of such bond, or coupon, and none of the parties hereto shall be affected by any notice to the contrary.

SECTION 5. (a) In case any bond issued hereunder, with the coupons thereto pertaining, shall, prior to the payment thereof, be mutilated, lost, or destroyed, a new bond, including coupons, of like tenor and date, and bearing the same distinctive number, may, at the discretion of the Company and the Trustee, be executed, certified and delivered in exchange for, and upon cancellation of, the mutilated bond and its coupons, or in substitution for the bond and coupons so lost, or destroyed, upon receipt of (1) satisfactory evidence of the loss, or destruction, of such bond and its coupons; (2) proof of ownership thereof; (3) indemnity satisfactory to Roe & Co., Inc., the Company and the Trustee; and (4) payment of cost of preparing said bonds and coupons; or Roe & Co., Inc., may, in its discretion, but without obligation so to do, pay any bond, or coupon, which may have been so lost, mutilated, or destroyed, upon presentation to it and to the Company of like (1) evidence, (2) proof, and (3) indemnity.

(b) The Trustee and Roe & Co., Inc., shall incur no liability for anything done by him, or it, under this section.

SECTION 6. The bonds and coupons secured by this indenture are issued and delivered, and are intended to circulate, as negotiable instruments. No purchaser before maturity of any of said bonds shall, as to the lien which this indenture purports to effect, be affected, unless he shall have actual knowledge thereof, by any equities that might, at any time, exist between the Company and the Trustee, or any previous holder, or owner, of such bond.

SECTION 7. If the time of payment of the principal of any of said bonds, or of any of said coupons, shall be extended to a date later than the regular maturity thereof, then, unless the legal holders of all other of said bonds then outstanding shall have consented to such extension by a writing delivered to the Trustee, the lien and security hereof shall as to every such extended bond, or coupon, be postponed and made subordinate to said lien and security as to all other of said bonds and coupons then outstanding.

ARTICLE II.

Payment and Redemption.

SECTION 1. The Company hereby covenants and agrees that it will duly and punctually pay, or cause to be paid, to every bondholder of any bond issued hereunder and secured hereby, the principal thereof, and the interest accrued thereon, together with said federal income tax, or taxes thereon, computed in the manner set forth in Section 2, Article III hereof, and further specifically agrees to pay the same, or cause the same to be paid, in the following manner:

(a) The Company shall deposit with Roe & Co., Inc., or such other depositary as the Trustee may, from time to time, designate, the interest respectively due for the first four semi-annual periods ten days in advance of each respective due date.

(b) Beginning on the first day of January, 1925, and on the first day of each of the eleven months next immediately succeeding thereafter, regardless of the time of presentation of any bonds, or coupons, the Company shall deposit with said Roe & Co., Inc., or such other depositary as the Trustee may select for the account of the bondholders, a sum of money, which will be equal to one-twelfth of the interest accruing for the period beginning January 1st, 1925, and ending December 31st, 1925, and, thereafter, beginning January 1st, 1926, until and including December 1st, 1942, the Company shall likewise deposit in equal monthly installments, on the first day of each of the months, one-twelfth of the total interest charges accruing within each ensuing yearly period respectively.

(c) The Company further agrees to deposit with said depositary, regardless of the time of presentation, or surrender, of any of said bonds, or coupons, on the first day of January, 1925, and on the first day of each of the eleven months next immediately succeeding thereafter, a sum of money which will be equal to one-twelfth of the principal due January 1st, 1926, and, thereafter, beginning January 1st, 1926, until and including December 1, 1942, the Company shall likewise deposit in equal installments on the first day of each month one-twelfth of the principal due at the end of each ensuing period respectively.

(d) The intent hereof being that such aggregate deposits thirty days before the date of each semi-annual interest payment shall be

sufficient to meet such interest payments, when due and as they mature; and that such aggregate deposits thirty days before the date of each principal payment shall be sufficient to meet such principal payments, when and as they mature.

(e) On the date of the deposit on account of interest last preceding each semi-annual interest date, the Company shall further deposit with said depository, as and for income tax payments, a sum computed as provided for in Section 2, Article III hereof.

(f) Ten days prior to the date of each semi-annual interest payment, the said depository, if any there be other than said Roe & Co., Inc., shall deposit with said Roe & Co., Inc., for the benefit of the bondholders, any funds on hand received as aforesaid, not in excess, however, of a sum sufficient to meet the current semi-annual interest charge, or semi-annual interest charge and principal charge as the case may be, together with the amount of said income tax, or taxes, and the receipt of said Roe & Co., Inc., shall be sufficient authority for such payment to said Roe & Co., Inc.

SECTION 2. (a) When, and as, each of the payments of principal, interest, or said income tax, or taxes shall be made to Roe & Co., Inc., or such depository as may be then acting hereunder, the liability of the Company with respect thereto shall be discharged, and the holders of the bonds, or coupons, covered by such payments shall look for payment thereof, if any, solely to Roe & Co., Inc., or to such depository as may have been designated by the Trustee, and shall cease to be entitled to the benefit of this indenture on account of said bonds, or coupons, to the extent of the particular payment. The payments so made shall be applied by Roe & Co., Inc., to the payment of said bonds and coupons and said income tax, or taxes, when due.

(b) No payments made to Roe & Co., Inc., shall draw interest, and said Roe & Co., Inc., shall not incur any liability other than for the amounts actually deposited with and received by it, to be paid without interest to the holder or holders of the bonds and coupons as aforesaid.

(c) Said Roe & Co., Inc., shall deposit any, or all, funds which may be, at any time, received by it under any of the terms, or provisions, of this indenture, in such bank, or banks, as it may, in its reasonable discretion, select, but in no event shall said Roe & Co., Inc., be required to hold any of said deposit, or deposits, in specie, or currency, and, in no event, shall it be required to deposit

any, or all, of said funds in separate, or special, accounts in such bank, or banks, but said funds may be mingled with any other deposits, or credits, of said Roe & Co., Inc.

SECTION 3. (a) No bonds, or coupons, which may be paid, bought, or redeemed, by the Company, or by any guarantor, or surety, or by any one in the Company's behalf, shall be reissued, but the same shall be forthwith cancelled by said Roe & Co., Inc., and delivered to the Company and shall not thereafter be reissued, or, in any manner, participate in the security of this mortgage, or deed of trust, and no offer, or tender, of payment made conditional upon the delivery of any bond, or coupon, uncanceled, shall be valid hereunder; provided, however, said Trustee, or said Roe & Co., Inc., may, at their option and in their absolute discretion, but without any obligation so to do, permit any bonds, or coupons, that have matured to be purchased by any person and reissued, provided said bonds and coupons are endorsed with a statement to the effect that the lien thereof is subordinate to the lien of all other bonds, or coupons, which have not yet matured.

(b) In every case of a partial payment of any bond, or coupon, such partial payment shall be noted on the bond or coupon.

SECTION 4. If, at any time, the Company, or its assigns, shall fail to make such deposits, or to pay any such bonds, or coupons, as and when the same shall fall due, then Roe & Co., Inc., or any person, firm, or corporation, who or which may succeed to its business, may purchase and hold the same, and such bonds, or coupons, shall not be subordinated to other outstanding bonds and coupons, but shall be considered as past due obligations of the Company, for all purposes, excepting only that said failure of the Company to make such deposits, or payments, upon the bonds, or coupons, so purchased and held by Roe & Co., Inc., shall not entitle the remaining bondholders to declare the principal of all the bonds hereby secured and thus outstanding to be due and payable immediately, anything herein to the contrary notwithstanding.

SECTION 5. (A) Any, or all, of said bonds may be redeemed and prepaid on any interest payment date, by payment of the full amount of principal thereof, with interest and all of said taxes to the date of redemption and a premium of two (2%) per cent upon the principal of the bonds so to be redeemed, but, in each instance, such prepayment of said bonds shall, so far as practicable, be in the reverse of their numerical order, beginning with the bond then

unpaid bearing the highest number; and any such redemption shall be made, as follows:

(a) At least thirty days prior to the date fixed for redemption, the Company shall deliver to the Trustee written notice of its intention so to redeem, and shall deposit with Roe & Co., Inc., an amount of money sufficient to pay the full amount of the principal of the bonds so to be redeemed, all interest to accrue thereon to the next ensuing interest payment date, and said federal income tax, or taxes, upon such interest payment as aforesaid, together with a premium of two (2%) per cent of the principal of such bonds so to be redeemed.

(b) The Company shall likewise deposit with the Trustee an amount of money sufficient to pay the cost of publishing and mailing the notices hereinafter provided for.

(c) Thereupon, the Trustee shall determine the number of the specific bonds to be redeemed and shall, at least once prior to the date of redemption, publish a notice that such bonds are called for redemption, in a daily newspaper of general circulation published in the City of New York, and shall mail a similar notice to each of the registered holders, if any, of said specific bonds, at their last known post office address. But such notice by mail shall not be a condition precedent to such redemption, and the failure to mail any such notice shall not affect the validity of the proceedings for such redemption.

(d) Thereupon, the bonds shall cease to be entitled to any benefit of the lien of this indenture, and the Company shall be freed from all liability thereon, and the money so deposited shall be applied by Roe & Co., Inc., to the redemption of such bonds and the payment of said federal income taxes, if any, upon presentation and surrender, of such bonds, with the coupons maturing on the redemption date, and all coupons not due at the date of redemption. All bonds so called for redemption shall cease to bear interest from the date thus fixed for their payment, and all unmatured coupons shall become null and void immediately, pursuant to the deposit for the redemption thereof.

(e) The Company shall not have the right to redeem any, or all, of said bonds, if it shall be in default under the terms of this indenture, unless the Trustee shall consent thereto.

(f) The Trustee may, in his discretion, require all redeemed

bonds to be deposited with him, until maturity of their respective terms.

SECTION 6. (a) If any bond shall be presented for payment, when due under any of the provisions thereof, or of this indenture, not accompanied by all interest coupons thereto belonging, both matured and unpaid and subsequently maturing, the holder thereof shall, before receiving payment thereof, satisfactorily indemnify the Company and the Trustee against all loss, cost, damage, or expense, to which they, or either of them, may be subjected by reason of any claim, or demand, that may be made, at any time, upon such unrepresented interest coupons.

(b) No interest coupon for matured interest belonging to any bond hereby secured shall, unless accompanying such bond, be entitled, in case of a default hereunder, to any benefit of, or through, this indenture, until after the prior payment in full of the principal of all the bonds issued hereunder and of all matured interest coupons, belonging thereto, and accompanying the same.

ARTICLE III.

Title, Taxes, Liens, etc.

SECTION 1. (a) The Company covenants that it is lawfully in possession under said lease from said Koe & Co. to it, and that said lease, at the date of the delivery of this instrument, constitutes a valid subsisting demise of the property for the term therein set forth, and that this trust mortgage is lawfully executed in conformity therewith, and is, and will be kept, a first lien on the interest of the Company in said lease and premises; that the Company will not, at any time, create any debt, lien, or charge, which will be prior to the lien of this indenture, and will not do in, upon, or about, said leasehold estate and premises, or any part thereof, anything that might, in any wise, weaken, diminish, or impair, the value thereof, or the lien of this trust mortgage; that the Company will forthwith cause this indenture to be recorded in the office of the Register of the County of New York, as a mortgage, and will do, and cause to be done, all such things as may be required by law, in order fully to protect the security of the bondholders hereunder and all rights of the Trustee; that all rent by said lease reserved, payable prior to the delivery of this instrument, has been paid, and that there is, at the date of the delivery of this

instrument, no default in respect of any of the provisions of said lease; that the interest of the Company, as lessee under said lease, is free from all other and former grants, mortgages, encumbrances and claims of every nature whatsoever, except as aforesaid, and that this Company will forever warrant and defend the Trustee in the peaceable quiet possession thereof against every person claiming, or to claim the same, or any part thereof, excepting the last day of the second term thereof.

(b) The Company further covenants that it will perform all conditions on its part to be performed, and will cause said Koe & Co. to perform all conditions on its part to be performed necessary to secure, and that it will secure, a further and second valid lease of the premises covered by said demise to it from said Koe & Co. for a further term of twenty (20) years commencing on the thirtieth day of April, 1934, which said term, with the exception of the last day thereof, shall be, in all respects, covered by the lien of this trust mortgage, and subject to the terms hereof, to the same extent as if said second term had already been secured. In the event that the Company should at any time neglect or fail to comply with any of the provisions of said lease with respect to procuring such further and second lease, the Trustee is hereby expressly irrevocably authorized, without obligation so to do, to comply with any and all of such provisions, on behalf of, and in the name of, the Company, and any such action, so taken by the Trustee, shall be binding and conclusive upon the Company.

(c) The Company further covenants and agrees that, so long as any of the indebtedness secured by this indenture remains unpaid, unless the Trustee should otherwise in writing consent, the fee title and the leasehold estate in the premises covered by said lease, hereinbefore described, shall not merge, but shall always be kept separate and distinct, notwithstanding the union of said estates, either in the lessor, or in the lessee, or in a third party, either by purchase, or otherwise; and the Company further covenants and agrees that, in case it acquires the fee title, or any other estate, title, or interest, in the premises covered by said lease, this indenture shall attach to, and cover, and be a lien upon, such other estate so acquired, and such other estate so acquired by the Company shall be considered as assigned, or conveyed, to the Trustee the same as though specifically herein assigned or conveyed.

(d) The Company further covenants that, at any time, upon

request by the Trustee, it will execute, acknowledge and deliver all such additional papers and instruments, and all such further, necessary assurances of title, and do, or cause to be done, all such further acts and things as may be proper, or reasonably necessary, for effectually carrying out the intent of this indenture, and will especially, at any time, upon the demand of the Trustee, execute and deliver to him assignments of the Company's interest in any and all leases made, or to be made, by it, covering any part of the mortgaged estate, premises and property.

SECTION 2. (a) The Company covenants that it will promptly pay all ground rents, as and when the same shall become due under the lease hereinbefore described, and will notify the Trustee immediately when each payment is made, and will, in every case, take a proper receipt for the rent so paid, and will, within ten days after the time when such payment shall be due and payable, deliver to the Trustee a duplicate original receipt, and will deposit with the Trustee, upon his demand, the original receipts for the payment of such rents; and will, in all respects, promptly and faithfully keep, perform and comply with all the terms, provisions, covenants, conditions and agreements in said lease to be kept, performed and complied with by the lessee therein, and will not do, or permit anything to be done, the doing of which, or omit, or refrain from, doing anything, the omission of which, will be a ground for declaring a forfeiture of any of said lease; that it will, at all reasonable times, furnish to the Trustee any and all information, which he may request, concerning the performance by the Company of the covenants of said lease, or of this indenture, and will permit the Trustee, at all reasonable times, to make investigation, or examination, concerning such performance; that it will promptly deposit with the Trustee (to be held by him, until the lien of this indenture shall be released) any and all documentary evidence received by it, showing compliance by the Company with the provisions of said lease, and will, also, deposit with the Trustee (to be held by him, until the lien of this indenture shall be released) an exact copy of any notice, communication, plan, specification, or other instrument, or document, received, or given, by it, in any way relating to, or affecting, said lease, or said premises, which may concern, or affect, the estate of the lessor, or of the lessee, in, or under, said lease, or in the real estate thereby demised.

(b) The Company further covenants that it will not, at any

time, suffer any mechanics' liens to be established against said premises, or any part thereof; that it will pay all taxes and assessments, extraordinary as well as ordinary, water rents, municipal, governmental and other rates, charges and impositions, which shall at any time, be, or have been, assessed, levied, or imposed, upon the Company, or upon said premises and property, or any part thereof, and will make such payments respectively, from time to time, within thirty days, after the same shall become respectively due and payable, or become a lien upon the mortgaged premises and property, and, in due time, to prevent any delinquency thereon, or any forfeiture, or sale, thereof, and will produce to the Trustee receipts therefor, or other satisfactory evidence of each of such payments, within ten days thereafter.

(c) The Company further covenants and agrees that it will pay all lawful United States income taxes, assessments or charges, which the Company, the Trustee or said Roe & Co., Inc., may be required to pay on the interest and income yielded by said bonds, or to deduct, or retain therefrom, under, or by reason of, any present and future law, or laws, of the United States, and the Company agrees to pay to the Trustee or Roe & Co., Inc., a sum equivalent to the amount of said taxes, assessments and charges so required to be deducted and any such tax, assessments and charges, which the bondholders may, at the time of the payment of said interest, be liable to pay directly on account of the income represented by the interest on the bonds secured hereby; but the liability of the Company to each bondholder for such taxes, assessments and charges for any one year provided for in this paragraph shall not exceed four (4%) per cent of such annual interest and income on each bond.

(d) Nothing in this indenture contained shall require the Company to pay any tax, assessment, impost, charge, claim, demand, or lien whatsoever, so long as it shall, in good faith, and by appropriate legal proceedings, contest the validity thereof; and if, in any such case, the Company shall, upon the written request therefor by the Trustee, deposit with said Trustee an amount of money sufficient to discharge such tax, assessment, impost, charge, claim, demand or lien in full, including costs and interest, to be used by the Trustee for the purpose of discharging the same in the event that the Company shall be unsuccessful in said contest, any such delay in payment shall not subject said premises, or any part

thereof, to forfeiture, or sale, and shall not entitle the Trustee, or the bondholders, or any of them, to pay such contested charge, or lien. In lieu of depositing such cash, the Company shall, however, have the right to give to the Trustee a bond with a surety satisfactory to the Trustee, and authorized, if a corporation, to do business in the State of New York, in such reasonable sum as will, in the judgment of the Trustee, be sufficient for the purpose, conditioned to pay such contested charge, or lien, in full, including costs and interest, in case the Company, if it shall be unsuccessful in said contest, shall not forthwith discharge such charge, or lien, in full.

SECTION 3. The Company, for itself, its successors and assigns, covenants and agrees that, without the consent of the Trustee, it, and they, will not, by reason of any mortgage, hereafter apply for any deduction from the taxable value of the lands embraced in this indenture, and will not claim any credit on principal, or interest, on said bonds on account of the payment of any taxes upon said land, and, in case of any such deduction, or claim, said Trustee, or the Company, shall have the option, either to pay, or contest, the payment of said taxes, in which event the amount so voluntarily paid by the Trustee, or which he may be ultimately obliged to pay after contest, shall forthwith become a first lien hereunder in favor of the Trustee upon said mortgaged premises paramount to all liens thereon, and the Company covenants and agrees to reimburse and repay to the Trustee, upon demand, the amount so paid by him.

ARTICLE IV.

Erection and Maintenance of Building.

SECTION 1. The Company covenants that it will proceed, with reasonable dispatch and within eighteen months, to erect upon said premises a twelve story and basement steel fireproof bank and office building, containing substantially 2,500,000 cubic feet; and that said building shall be erected in accordance with the terms of said lease, and, substantially, in accordance with plans and specifications prepared and filed by Smith & Jones, Architects, and, in accordance with such additional, or amended plans, details and specifications as may be, from time to time, approved by the Trustee, and as more particularly described in the building loan agreement hereinafter referred to.

SECTION 2. (a) The Company expressly covenants fully to pay

for said building, and all bills, or claims, contracted or incurred, in connection with the erection and construction and equipment thereof.

(b) If the Company shall, for any reason, abandon, or unreasonably delay, the construction of said building, or the equipment thereof, or shall fail to complete the same, or shall be prevented from completing the same, by any cause whatsoever, the Trustee, at his election (but without prejudice to any other right of the Trustee, or the bondholders, arising in consequence of such default), may complete the erection and construction thereof. For the purpose of completing said building and equipment thereof the Trustee may, in such event, make any and all necessary contracts for architects, contractors, construction work, and for work, labor, or materials, supplies and equipment in connection therewith, in the name of the Company, and may sign the name of the Company as its attorney-in-fact, hereby irrevocably appointed for such purpose, or to any and all papers and documents necessary for such purpose; or the Trustee may make such contracts in his own name, and may incur such indebtedness in his own name. The Trustee may, in such event, pay, at any time, any outstanding just bills, or liability, or indebtedness, so contracted, or incurred, by the Company, or by the Trustee in the Company's behalf, and may make up any deficit, in connection with the construction and erection of said building, and the equipment thereof, and may pay any just bills, or indebtedness, contracted by the Trustee in connection with any such contracts, or in connection with any liability incurred by the Trustee, as aforesaid, regardless of whether or not any mechanic's lien claims have been filed or established in any of the foregoing instances. The Company hereby expressly agrees to repay to the Trustee, upon demand, any sums advanced by the Trustee, in accordance with the foregoing provisions, and to reimburse the Trustee for, and on account of, any payment, or payments, made by reason of, or pursuant to, the foregoing provisions, and any and all sums advanced by the Trustee hereunder shall be deemed a charge upon said premises, as provided in Article VI hereof. The Trustee may, at any time, apply to the payment of any of said bills, liability, or indebtedness, contracted, or incurred, by the Company or the Trustee, all, or any part, of any sums to which the Company might otherwise be entitled, under and by virtue of said contract with Roe & Co., Inc., or any building loan

contract, or agreement, relating to said building, or premises, as the attorney-in-fact of the Company for that purpose hereby irrevocably appointed, and the Company expressly covenants to repay to the Trustee, upon demand, any deficit after the application of such sums to the payment of said bills, liabilities, or indebtedness.

SECTION 3. The Company expressly covenants to clear off and remove any mechanic's liens, which may be established against said premises in any court of competent jurisdiction, within thirty (30) days, and, in default thereof, the Trustee, without the necessity of obtaining any further judicial determination thereof, may forthwith, in his sole discretion, either clear off and discharge such liens, or, allowing the same to stand, may order and direct said Roe & Co., Inc., to retain and pay over to the Trustee, from any moneys remaining in its hands, then, or thereafter, payable by it to the Company, under the agreement hereinbefore mentioned, sufficient to satisfy said liens, with all expenses, including attorneys' fees, which may be incurred in such satisfaction, or in the contest thereof, by the Trustee, or others interested.

SECTION 4. This trust mortgage is made pursuant to a certain building loan agreement entered into between the Company and Roe & Co., Inc., bearing even date herewith, and is subject to the provisions thereof, and said agreement is, in all respects, made a part hereof to the same extent as if herein set forth at length. The Company covenants and agrees to and with the Trustee and the holders of all of the said bonds and coupons that the Company will do, and perform, all of the agreements upon its part contained in the said building loan agreement.

SECTION 5. The Company covenants to maintain said premises, including the contents thereof, in good first class repair, working order and condition, and to make all necessary replacements and substitutions, to the satisfaction and approval of the Trustee, all building, fire and other similar departments of the City, County, State and Federal government, all insurance companies, the New York Board of Underwriters, the New York Fire Insurance Exchange, and all other similar organizations having any legal interest in, or jurisdiction over, the same.

SECTION 6. (a) The Company covenants that it will comply with all laws, acts, rules, regulations and orders of any national, state, legislative, executive, administrative, or judicial body, commission, or officer, exercising any power of regulation, or supervision, over

the Company, or any part of said mortgaged premises, whether the same be directed to the conduct of the business of the Company, repairs, manner of use, structural alterations, or otherwise; provided, however, that the Company may contest any such law, act, rule, regulation, or order, in any reasonable manner, which will not affect the title of the Trustee to any part of the trust estate, the conduct of the Company's business, or the maintenance of that high standard of physical condition, which is hereinbefore set forth.

(b) The Company further agrees that, as long as it is the owner of the premises, it will, at all times, maintain the corporate organization, and that it will not permit, or suffer, any use, or non-use, of its corporate authority and franchises, whereby said corporate authority and franchises may become, in any wise, forfeitable, or forfeited. Any mortgage placed thereon shall be made expressly subject to the lien of this indenture to the full amount advanced, or to be advanced hereunder.

ARTICLE V.

Insurance.

SECTION 1. (a) The Company covenants to keep the buildings erected, and to be erected, on said premises insured against loss, or damage, by fire and lightning for 80% of the insurable value thereof, in the manner provided for in said lease from said Koe & Co. to it, and to maintain said insurance until the entire indebtedness hereby secured shall have been paid. All insurance policies may, at the option of the Trustee, from time to time, be procured and renewed by Brown & Co., Inc., as the agent of the Company. All fire insurance policies shall be made payable to the Trustee for insurance, as provided for in said lease.

(b) The Company covenants to pay all premiums on said insurance policies, upon presentation to it of the bills therefor by Brown & Co., Inc.

(c) In case of the Company's failure to pay any premiums, the Trustee may do so, and all moneys so paid by the Trustee, with interest thereon at the rate of six per cent per annum from the time of each advance, shall become so much additional indebtedness secured hereby, and be at once due and payable, which payments, when and as they may be made, shall be a prior lien upon said premises. Any and all policies shall, at any time hereafter, be

subject to the reasonable approval of the Trustee, and, if he shall deem the insurance company unsatisfactory, new policies shall be substituted.

SECTION 2. (a) If any building, or any part thereof, erected, or hereafter erected, on the premises, shall be destroyed or damaged, by fire, or any other cause whatsoever, the Company covenants forthwith to repair, rebuild, restore, renew and replace the same and to pay therefor in the manner provided for by said lease.

(b) Any insurance moneys to which the Company shall be entitled under said policy, or policies, shall, subject to the rights of the Lessor under said lease, be forthwith paid over to the Trustee. When the estimated cost of such repairing, rebuilding, restoring, or replacing, shall have been established by a sworn statement of an architect, or general contractor, to be selected by the Trustee, the Company hereby expressly agrees to deposit with the Trustee the difference, if any, between the cost of such repairing, rebuilding, restoring, or replacing, as thus shown, and the net amount of the insurance available for the same. In the event that the Company, in the case of damage to said building, or buildings, or the destruction thereof, shall have first deposited with the Trustee the aforesaid difference, and further shall, with reasonable dispatch, repair, rebuild, restore, or replace, the same, or construct a new building, or buildings on said premises in place thereof, or shall have furnished bond, as hereinafter provided, in such case, but not otherwise, all insurance moneys which shall be received by the Trustee shall, after deducting therefrom the reasonable charges of the Trustee in connection with the collection and disbursement of said moneys, be paid out, from time to time, as the work progresses, upon architect's certificates, for the expense of such repairing, rebuilding, restoring, or replacing, of said building, or buildings, but a sufficient amount of money shall, at all times, in the discretion of the Trustee, be retained by the Trustee to pay for the completion of such repairing, rebuilding, restoring, or replacing, of said buildings free from liens.

(c) In the event that the insurance moneys shall be collected and disbursed directly by the Trustee for insurance named in said lease, the deposit of said difference in cost, if any, shall, nevertheless, be made with the Trustee, and said amount shall be disbursed by the Trustee towards the completion of such repairing, rebuilding, restoring, or replacing, of said building, or buildings, as the

work progresses, when said amount shall be sufficient for the completion thereof.

(d) In the event that any such loss shall exceed ten thousand (\$10,000) dollars, the Company shall submit to the Trustee plans and specifications, to be subject to the approval of the Trustee, and shall exhibit to the Trustee any contract, or contracts, for such work, or for the supplying of any such materials. In order to determine such cost, the Trustee may, thereupon, obtain from any disinterested architect, or contractor, an estimate of the cost of such repairing, rebuilding, restoring, or replacing, the cost of which may be deducted from the amount of such insurance.

(e) In the event of the total destruction of any building, or buildings, or in the event of a loss requiring substantially the reconstruction of an entire building, or buildings, the Company shall forthwith proceed to erect and complete a new building, or buildings, on the said premises in accordance with the terms of said lease and to be substantially similar to the building, or buildings, so damaged, or destroyed, and said new building, or buildings, shall be erected, or constructed, substantially according to the plans and specifications of the building so destroyed, or according to such other plans and specifications as the Trustee, in his absolute discretion, may approve.

(f) In lieu of the deposit of said shortage, or difference, in cost with the Trustee as hereinbefore provided, the Trustee, in his discretion, may accept a good and sufficient bond with sureties satisfactory to the Trustee, and in form and amount satisfactory to the Trustee, conditioned that the Company shall and will, within two years after the happening of such damage, or destruction of such building, erect and complete such new building, or buildings, in accordance with said plans and specifications, free from all claims for mechanics' liens. In the event of partial damage, or destruction, in lieu of said deposit, the Trustee may, in his discretion, accept a similar surety bond, conditioned for the proper repairing, restoration, or replacing, of such damage or destruction. Upon being furnished with such bond, the Trustee shall disburse all insurance moneys turned over to him as aforesaid, and not otherwise.

(g) In computing the time for the erection of such new building, or buildings, upon said premises, or any subsequent new building, or buildings, any delay caused by insurrection, riots, strikes, lockouts, storm, fire, act of God, or any unavoidable short-

age of materials, or labor, or causes beyond the control of the Company, shall be added to the time allowed. After the completion of said building, or buildings, as aforesaid, free from all liens, the proceeds from any and all fire insurance policies shall be disbursed by the Trustee, upon the order of the Company, towards the equipment of said building, or buildings, with suitable apparatus and equipment of at least equal quality to the same now in said building. Said orders shall be subject to the approval of the Trustee with respect to the apparatus and equipment covered thereby and with respect to the amount thereof.

SECTION 3. (a) In the event that the Company shall fail forthwith to repair, renew, restore, rebuild, or replace, the building, buildings and mortgaged property as provided in the last section, then the Trustee, in his absolute discretion, is hereby authorized (but not required), and without prejudice to any other right, or remedy, hereunder, in the name of the Company, or otherwise, to do such repairing, rebuilding, restoring, renewing, or replacing, and to have all insurance moneys applied toward the cost thereof, and to do all other needful things, so as to preserve the security hereof, and, in such event, and for such purpose, the interest of the Company in all insurance moneys shall be, by virtue hereof, assigned and transferred to said Trustee.

(b) Any and all balances remaining in the hands of the Trustee, after the complete repairing, rebuilding, restoring, renewing and replacing of said building, or buildings, or personal property, as aforesaid, shall, provided the Company shall not be in default in any of the terms, conditions and provisions of this trust deed, be paid over to the Company.

(c) In the event that the Company shall fail to rebuild, or repair, the said building, or buildings, so damaged, or destroyed by fire, within the period aforesaid next after the happening of such damage, or destruction, in accordance with the terms and conditions of this trust deed contained, then, and in such event, said Trustee shall have, and he hereby is given, the right, subject to the rights of said Koe & Co. under the terms of said lease, to apply any and all proceeds of insurance policies, which may, at such time, be in his hands, to the repayment (1) of any and all sums of money, which may theretofore have been advanced by such Trustee and shall not, prior thereto, have been repaid to such Trustee, together with interest thereon at the rate of six (6%) per

cent per annum from the time of the advancement until the repayment thereof in full; and shall (2) next apply the proceeds thereof, as far as the same shall allow, to the payment of accrued interest upon bonds, which shall have become due, by lapse of time, or declaration; (3) next, to the payment of the principal of those said bonds, if any, then matured, by lapse of time, or declaration, and unpaid; (4) next, to the payment, so far as said funds may allow, of the principal of all of the bonds secured by this trust deed, which shall be outstanding, at such time, and shall not have matured, by lapse of time, together with the accrued and unpaid interest in connection therewith; and (5) the balance, if any, shall be paid to the Company; but, if said funds shall not be sufficient to pay in full all of the items hereinabove provided for to be paid, then, and in such event, said Company shall forthwith pay over the deficiency in connection therewith to the Trustee, to be applied as last hereinbefore provided.

ARTICLE VI.

Trustee May Act for Company.

SECTION 1. (a) The Trustee is hereby authorized, or, in case of his refusal to act, the legal holder, or holders, of not less than fifty-one (51%) per cent in amount of the bonds hereby secured and outstanding at such time, is, or are, hereby authorized, but not required, whenever, and as often as, it may become necessary, or advisable, to do so, by reason of the delinquency of the Company in the performance of the covenants of this indenture, to pay rents, to procure, or renew, insurance, or to collect insurance moneys, or to place said mortgaged property in proper condition and repair, or to discharge taxes, or assessments, or other charges, levied, imposed, or assessed, upon the real estate and personalty, or any part thereof, or to redeem the same from any tax sale, or forfeiture, or to purchase any tax title thereon, or to remove any mechanic's lien, or other lien, or incumbrance, thereon, or to carry on the prosecution, or defense, of any suit affecting the security for the bonds issued hereunder, and to advance, or expend, the necessary money for any of said purposes, including the payment of reasonable lawyers' fees and court costs, stenographers' charges and expenses for procuring evidence, if any, and any and all costs for the preparation for trial, or trial, of any such suit.

(b) The Company expressly covenants to pay to the Trustee all moneys advanced, or expended, pursuant to all and any of the provisions of this instrument, with interest on each item at six (6%) per cent per annum; and all of such sums shall be deemed a first lien upon said premises and a charge upon said premises, prior and paramount to the bonds hereby secured, and are hereby declared to be so much additional indebtedness secured by this indenture and to be payable upon demand, in the same coin, and in the same manner, as the bonded indebtedness secured hereby; and, subject to the provisions of Article III hereof, it shall not be obligatory to inquire into the validity of any such tax title, or of such taxes, assessments, or charges, or of sales therefor, or of liens, or other items in advancing moneys in that behalf, as above authorized.

(c) Any action taken by the Trustee, or by the bondholders, under the provisions of this article, shall be without prejudice to, and not exclusive of, any other of their rights hereunder by reason of the default, if any, of the Company, which shall give rise to such action, and the provisions hereof shall not be construed as in any sense obligatory, or as requiring any affirmative action, upon the part of the Trustee and bondholders.

ARTICLE VII.

Right to Declare Bonds Due.

SECTION 1. (a) In case default shall be made in the payment of the principal, or of any interest on any, of said bonds, or in the due observance, or performance, of any covenant, or condition, whatsoever in this indenture required to be kept, or performed, by the Company, and (except as to payments of principal and interest due January 1, 1943), any such default shall continue for a period of thirty (30) days after written notice thereof to the Company by the Trustee, or to the Company and the Trustee by the holders of not less than fifty-one (51%) per cent in amount of the bonds hereby secured and then outstanding, specifying wherein such default consists, or, in the event that the Company shall cease doing business, or shall be dissolved, or shall go into liquidation, or in the event that a receiver of the Company, or any of its property, shall be appointed, or in the event that the Company shall be adjudicated a bankrupt, or insolvent, or shall make an assignment

for the benefit of its creditors, or shall voluntarily begin any proceeding, or take any steps for the purpose of having itself declared, or adjudicated, a bankrupt, or insolvent, then, and in any such case, the Trustee, in his discretion, and without any action upon the part of any bondholder, may, and upon the written request of the holders of not less than fifty-one per cent (51%) in amount of the bonds then outstanding, shall, or in case of his refusal, or failure, so to act within thirty (30) days after such request, the holders of not less than fifty-one (51%) per cent in amount of said bonds may, declare the principal of all bonds hereby secured and then outstanding to be due and payable immediately; and, upon any such declaration, the said principal, together with the interest secured thereon, shall become and be due and payable immediately, at the place of payment aforesaid, anything in this indenture, or in said bonds, to the contrary notwithstanding.

(b) The Company shall not be entitled to any notice of default with respect to principal and interest due January 1, 1943, or to any other notice not expressly herein provided for.

(c) All of the above provisions, however, are subject to the condition that if, after the principal of said bonds shall have been so declared to be due and payable, and before any sale of said premises pursuant to any order, judgment, or decree, in a judicial proceeding for the foreclosure of the lien hereof, all principal of said bonds due by lapse of time, and not by such declaration, and all arrears of interest, upon said bonds and interest on overdue bonds, or installments of interest at the rate of six (6%) per cent per annum, shall have been paid by the Company, or collected out of said premises, and the Company shall, also, have performed all other things in respect of which it may have been in default hereunder, and shall have paid the reasonable charges of the Trustee, or of the holders of said bonds, including reasonable attorneys' fees paid, or incurred, the Trustee may, by written notice to the Company, waive such default and its consequences; but no such waiver shall extend to, or affect, any subsequent default, or impair any right consequent thereon.

ARTICLE VIII.

Power of Entry, and Trustee's Rights to Take Possession.

SECTION 1. (a) In any case in which, under the provisions of Article VII hereof, the Trustee shall have the right to declare the

principal of all bonds hereby secured and then outstanding to be due and payable immediately, and in the event of default in the prompt payment of the principal and interest, or any part thereof, due January 1, 1943, the Company covenants, at any time, or times, upon the demand of the Trustee, forthwith to surrender to him, and the Trustee shall be entitled to take actual possession of the mortgaged premises as for condition broken, and, in his discretion, may, with, or without, force, and with, or without, process of law, and before, or after, declaring the principal of said bonds immediately due, and without any action upon the part of any bondholder, enter upon, take and maintain possession of all, or any part, of said mortgaged property, together with all records, documents, leases, books, papers and accounts of the Company, relating thereto, and may, as the attorney-in-fact or agent of the Company, or in his own name as Trustee, acting under the assignment of rents hereinabove made, and under the powers herein granted, hold, manage and operate said mortgaged property and collect the rents thereof, and lease the same in such parcels, and for such times, and upon such terms, as he may see fit, and may cancel any lease, or sublease, for any cause, or upon any ground, which would entitle the Company to cancel the same, and may sign the name of the Company, or of its successors or assigns, to all papers and documents in connection with such operation, and shall, after paying out of the revenue from said mortgaged premises all expenses of management and operation of said mortgaged premises, including rents, insurance premiums and the costs of such repairs, replacements, alterations and useful additions as may seem to him proper and judicious, and all taxes, assessments, or charges, or liens, upon said mortgaged premises, or any part thereof, together with reasonable attorneys' fees, and, after retaining reasonable compensation for all amounts collected as Trustee's fees for his services in that behalf, and such further sums as may be sufficient to indemnify the Trustee against any liability, loss, or damage, on account of any matter, or thing, done in good faith in pursuance of the duties of the Trustee hereunder, apply the residue, if any, *first*, to the payment of the defaulted coupons, if any, in the order of their maturity, with interest thereon at the rate of six (6%) per cent per annum from the date of maturity thereof, *secondly*, to the payment of accrued interest on bonds, which shall have become due, by lapse of time, or declaration, and, *thirdly*, to the payment of the principal

of those of said bonds, if any, then matured, by lapse of time, or declaration, and unpaid; but, in every instance, such payment shall be made ratably to the persons entitled thereto, without discrimination, or preference.

(b) Upon the payment in full of whatever may be due for principal, or interest, upon said bonds, or be payable for any other purpose, before any sale of the premises, or the entry of an order, judgment, or decree, for the sale thereof in a judicial proceeding for the foreclosure of the lien hereof, the Trustee, after making such provision as to him may seem advisable for the payment of the next installments of principal and interest, shall restore to the Company the possession of said property, which shall thenceforth be subject to this indenture as if such entry had not been made.

(c) The power of entry and the powers incidental thereto, as herein provided for, may be exercised as often as occasion therefor shall arise, and their exercise shall not suspend, or modify, any other right, or remedy, hereunder.

ARTICLE IX.

Foreclosure, Sale and Distribution.

SECTION 1. A. In any case in which, under the provisions of Article VII of this indenture, the Trustee shall have the right to declare the principal of all bonds hereby secured and outstanding to be due and payable immediately, and in the event of default in the prompt payment of the principal and interest, or any part thereof, due January 1, 1943, the Trustee may, without any action upon the part of any bondholder, and with, or without, declaring said bonds due, and, upon the written request of the holders of not less than fifty-one (51%) per cent in amount of said bonds then outstanding, shall,

(a) cause the property then covered by this indenture, or any part thereof, to be sold at public auction, at some convenient place in the City of New York aforesaid, after having first given notice of such sale, as required by law. The Trustee may adjourn any such sale, from time to time, by announcement, at the time and place appointed for such sale, or for such adjourned sale, and, upon the completion of any such sale, shall execute, or cause to be executed, such deed, assignment, bill of sale, certificate, or other assurance, to

the purchaser, as may be necessary to pass the title to the property so sold; or

(b) proceed to protect and enforce his rights and the rights of the bondholders herein, either by suit, or suits, in equity, or at law, in any court, or courts, of competent jurisdiction, whether for specific performance of any covenant, or agreement, contained herein, or in aid of the execution of any powers herein granted, or for any foreclosure hereof, or hereunder, or for any other sale of the mortgaged premises, or any part thereof, so far as may be authorized by law, or for the enforcement of such other, or additional, appropriate legal, or equitable, remedy as the Trustee may deem most effectual to protect and enforce the rights aforesaid.

B. Reasonable compensation for the services of the Trustee, and all costs and reasonably necessary expenses, including all expense of preparing for trial and trial, reasonable attorneys' and counselors' fees, referee's fees, stenographers', or reporters', fees, or charges for taking, reporting, or transcribing, any statement of witnesses, or testimony, or evidence, given, or heard, therein, expenses of procuring testimony and evidence, the cost of procuring testimony and evidence, the cost of procuring abstracts of title, opinions of title and continuations thereof, or a title guaranty policy, or policies, and documentary evidence, if any, and printing bills incurred by the Trustee in any such proceeding, or in the preparation therefor, or incurred by bondholders in a proceeding instituted under Section 7 of this article, or in the preparation therefor, shall become so much additional indebtedness secured by this indenture, and, until the same shall have been paid, such proceeding shall not be dismissed.

SECTION 2. (a) Upon, or at any time after, the commencement of any proceeding hereby authorized to be instituted after any one of the aforesaid events of default shall happen, the Court hearing the same, upon application and by nomination by the complainant, as a matter of strict right, and without notice to the Company, or anyone claiming under it, and without regard to the then value of said mortgaged premises, shall appoint a receiver, or receivers, of said mortgaged premises, or any part thereof, and the Company hereby irrevocably consents to such appointment and waives notice of any application therefor.

(b) Any such receiver shall have all of the usual powers and duties of receivers in like, or similar, cases, and all the powers and

duties of the Trustee in case of entry as hereinabove provided, and shall continue as such, and exercise all of said powers, until the date of confirmation of sale, and shall apply the moneys collected to the payment of reasonable compensation for his and his attorney's and counsel's services to be fixed by said court, to the payment of the expenses and charges of operating and maintaining said mortgaged premises and property, including taxes, insurance premiums, water taxes and repairs, whether accruing before, or after, such sale, and the balance, if any, toward the payment of the indebtedness hereby secured, and of any deficiency decree that may be entered in such proceeding.

(c) Any receiver appointed under any of the provisions of this indenture may operate and carry on the business of the Company completely and unrestrictedly as such Company could prior to such proceedings, any law now in force, or hereafter enacted, to the contrary notwithstanding.

(d) Any such receiver shall have the right to incur obligations and to issue certificates thereof for such purposes, in such amount, at such times, for such maturities, and at such rates of interest, as the Trustee shall authorize.

SECTION 3. In case of a sale of said mortgaged property, or any part thereof, under this instrument, the proceeds of such sale, unless otherwise provided by law, shall be applied, as follows:

(a) To the payment (1) of all costs of the action, including reasonable compensation of the Trustee, his agents, attorneys and counsel, (2) of all costs and expenses of such proceedings, as provided in Section 1 of this Article, and (3) of all costs of advertisement, sale and conveyance, and (4) of the compensation of any Receiver, his agents, attorneys and counsel and expenses of receivership.

(b) To the payment of all other expenses of the trust hereby created, including all moneys advanced by the Trustee, or the holders of said bonds, pursuant to the provisions of this indenture, or for any other purpose authorized, or permitted, by the terms of this indenture, with interest thereon at the rate of six (6%) per cent per annum from the time of the respective advances of such sums until the repayment thereof; and all of the items referred to in this and the above subparagraph (a) shall be so much additional indebtedness secured by the indenture, and shall be included and

allowed in the judgment, or decree, entered in any such foreclosure suit, if lawful.

(c) To the payment, *pro rata*, of all of the said bonds and interest coupons and interest upon overdue bonds not represented by interest coupons and interest upon overdue interest coupons, without preference of principal over interest, or interest over principal, subject, however, to the provisions of Article II, and of Section 6 and Section 7 of this Article. Only coupons which shall have matured, and the earned portion of those next maturing, shall be entitled to participate in such proceeds.

(d) To the *pro rata* payment of any said income tax due to the holder, or holders, of any bond, or bonds, or interest coupons, not in excess of four (4%) per cent of such interest.

(e) To the payment of the surplus, if any, to the Company.

SECTION 4. (a) At any such sale, any bondholders, or the Trustee, may bid for and purchase said mortgaged premises, or any part thereof. The purchaser, at any such sale, shall be entitled, in making settlement, or payment, for the property purchased, to use and apply any bonds and any matured and unpaid coupons hereby secured, by presenting such bonds and coupons in order that there may be credited thereon the sum apportionable and applicable to the payment thereof, out of the net proceeds of such sale; and, thereupon, such purchaser shall be credited, on account of such purchase price payable by him, with the sum apportionable and applicable out of such net proceeds to the payment of the bonds and coupons so presented; PROVIDED, HOWEVER, that, in all cases, the purchaser, or purchasers, shall pay in money a sufficient sum to cover the items referred to in subparagraphs (a) and (b) of Section 3 of this Article.

(b) Any such sale shall operate to divest all right, title, interest, claim and demand whatsoever, either in law or in equity, of the Company, its successors and assigns, and of any person claiming through, or under, them, in and to the property so sold, or any part thereof.

(c) No purchaser, at any such sale, shall be bound to see to the application of the purchase money, or to inquire as to the authorization, necessity, expediency, or regularity, of any such sale.

(d) Should the Trustee become the purchaser at such sale, the following rights, privileges and obligations shall, thereupon, be created:

(aa) All of the bondholders shall contribute and pay the Trustee their respective and proportionate share of the total of the items referred to in subparagraphs (a) and (b) of Section 3 of this Article, for which contribution and payment they shall be respectively liable as for money paid by him, at their request; and, in default of such contribution and payment, and as a cumulative, and not as an alternative, right, the Trustee shall have a lien therefor upon the interest of such defaulting bondholders in said premises, or in the proceeds received by the Trustee, upon any subsequent sale thereof.

(bb) The Trustee may forthwith sell and convey said premises as a whole, or in such parts and parcels, and for such price, and upon such terms, as to him, in his sole discretion, may seem proper; and

(cc) Until the Trustee shall thus sell and dispose of said premises, he shall be entitled to enter upon, and take possession of, the same, if necessary, complete the construction and equipment of the building, if necessary, to carry out the purpose of this instrument, lease, or operate, maintain and manage the same, by such agents, servants and attorneys as he may select, and receive and collect the rents, earnings, incomes and profits thereof, and pay therefrom and out of the proceeds of any sale thereof, all proper costs, charges and expenses of such construction and equipment, operation, maintenance and management, including reasonable compensation for such Trustee, his servants, agents and attorneys, from time to time, as he may select; and

(dd) Distribute the remainder of moneys thus received by him ratably among those entitled thereto.

SECTION 5. (a) If any one, or more, of the events of default, as set forth in this indenture, shall happen, and shall continue for thirty days after notice of default in the cases where such notice is hereinbefore provided, the Company, upon demand of the Trustee, shall pay to the Trustee, at his office in the City of New York, for the benefit of the holders of the bonds and coupons and claims for interest then outstanding, in United States gold coin of not less than the standard of weight and fineness existing on the date hereof, a sum equivalent to the amount due on all of the outstanding bonds for principal and interest, with interest upon the overdue principal and installments of interest, at the rate of six (6%) per cent per annum, and, in case the Company shall fail to pay the same forth-

with upon such demand, the Trustee, in his own name, and as Trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

(b) The Trustee shall be entitled to recover judgment, as aforesaid, either before, or after, or during, the pendency of any proceeding for the enforcement of the lien of this indenture, and his right to recover any such judgment shall not be affected by any sale hereunder, or by the exercise of any other right, power, or remedy, for the enforcement of the provisions of this indenture, or by the foreclosure of the lien thereof; and, in case of a sale of the mortgaged property, or any part thereof, and of the application of the proceeds of sale to the payment of the indebtedness represented by the bonds, coupons and claims for interest, the Trustee, in his own name, and as Trustee of an express trust, shall be entitled to receive and to enforce payment of any and all deficiencies, or amounts, then remaining due and unpaid upon any, or all, of the bonds then outstanding for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of such indebtedness remaining unpaid, with interest.

(c) No recovery of any judgment by the Trustee, and no levy of any execution under any such judgment upon property subject to the lien of this indenture, or upon any other property, shall, in any manner, or to any extent, affect, or impair, the lien of the Trustee upon the mortgaged property, or any part thereof, or any rights, powers, or remedies, of the holders of said bonds and coupons, but such lien, rights, powers and remedies shall continue unaffected and unimpaired as before.

(d) Any moneys thus collected by the Trustee, under this section, shall be applied by the Trustee as, and in the manner, provided for in section 3 of this article.

SECTION 6. The Company will not, at any time, insist upon, or plead, or, in any manner whatsoever, take the benefit, or advantage, of any extension law now, or, at any time hereafter, in force, nor will it claim, take, or insist, upon any benefit, or advantage, from any law now, or hereafter in force, providing for the valuation, or appraisement, of the mortgaged property, or any part thereof, prior to any sale, or sales, thereof to be made, pursuant to any provision herein contained, nor will it apply for, or obtain, any order, or decree, of any court of competent jurisdiction for the accomplishing of any of the aforesaid purposes; and it hereby expressly waives

all benefit and advantage of any such law, or laws, orders, or decrees; and it covenants that it will not hinder, delay, or impede the execution of any power herein granted and delegated to the Trustee, but that it will suffer and permit the execution of every such power, as though no such law, or laws, had been made and enacted.

SECTION 7. Whenever, under the provisions hereinabove contained, it shall have become the duty of the Trustee to institute legal proceedings, upon the written request of the requisite number of bondholders and upon deposit, or tender of deposit, of the requisite number of bonds with the Trustee, and upon tender of proper indemnity, and the Trustee shall have wrongfully, or unreasonably, refused, or failed, to act within thirty (30) days after such request and tender of indemnity, then, and in any such case, but under no other condition, the same number of bondholders, who, under the provisions hereof, have the right to demand action by the Trustee, may jointly institute such proceedings, in law or equity, as it was the duty of the Trustee to institute, but for the legal benefit of all holders of the bonds and coupons then outstanding. Every holder of any of the bonds hereby secured, including pledgees, accepts the same subject to the express understanding and agreement that every right of action, whether at law or in equity, upon, or under, this indenture, is vested exclusively in the Trustee, as trustee of an express trust, and under no circumstances shall the holder of any bond, or coupon, or any number, or combination, of such holders, have any right to institute any action at law upon any bond, or bonds, or any coupon, or coupons, or otherwise, or any suit, or proceeding in equity, or otherwise, except in case of refusal upon the part of the Trustee to perform any duty imposed upon him by this indenture, after request in writing by the holder, or holders, of at least fifty-one (51%) per cent in amount of said bonds as aforesaid. No action, at law or in equity, shall be brought by, or on behalf of, the holder, or holders, of any bonds, or coupons, whether or not the same be past due, except by the Trustee, or by the requisite number of bondholders acting in concert under the provisions of this section for the benefit of all bondholders.

A. PROVIDED, HOWEVER, that the holders of a majority in amount of principal of such portion of bonds falling due at any respective maturity and/or the holders of a majority in amount of interest coupons falling due upon any interest date as shall remain unpaid

for the period of thirty days after the due date thereof, may, thereafter, upon ten days' written notice to the Company, institute such action at law, or proceeding in equity, for foreclosure, or otherwise, as to such holders shall seem fit and proper, with the same rights and powers and to the same extent as the Trustee; subject to the following provisions, terms, conditions and restrictions:

(a) Said holders shall first obtain the written consent of the Trustee, which consent the Trustee may, in his sole discretion, grant or withhold, and may make such consent conditional upon such terms and stipulations as he may deem wise, or expedient, and may require all of said bonds and/or coupons to be produced and cause all of said bonds and/or coupons to be subordinated by endorsement in such manner and form as the Trustee may deem proper.

(b) The lien of the bonds and/or coupons held by the persons instituting such action, or proceeding (or subsequently joining therein as hereinafter provided), and the lien and security of this indenture as to said bonds and/or coupons shall *ipso-facto*, by the institution of such action, or proceeding, or joining therein, be rendered junior, inferior, subject and subordinate to the lien of all other bonds and coupons then outstanding secured by this mortgage, or deed of trust, other than the bonds and coupons then outstanding, which may have been theretofore subordinated.

(c) Such action in law, or suit in equity, and all proceedings had thereunder, and any and all orders, judgments, decrees, findings, sales, or other proceedings, had pursuant thereto, or thereunder, shall, in each and every instance, be made junior, inferior and subordinate to the lien of the other bonds and coupons secured by this mortgage, or deed of trust, then outstanding, except as aforesaid, and to the lien of this indenture as to said other bonds and coupons and to any proceedings had, or taken, under the terms of this indenture subsequent to such date.

(d) Any and all actions, or proceedings, so instituted, shall be had for the equal and proportionate benefit of all holders of said bonds and/or coupons, who have instituted, or joined in, such action, or proceeding, holding unpaid bonds and/or coupons in such respective maturity.

(e) In the event that the Trustee, at any time, prior to judgment, decree or sale, in proceedings brought under the provisions of this Section 7A, should elect to declare all of the outstanding

bonds due and payable, such proceedings shall be discontinued and the holders of the bonds and/or coupons instituting any action at law, or in equity, or joining therein, under the provisions of this Section 7A, shall be restored to the rights of all other holders of bonds and/or coupons hereunder to the same extent as if such last mentioned action, or proceeding, had not been instituted, and any funds in the hands of a receiver appointed in any such last mentioned suit, or proceeding, brought by bondholders under the provisions of this Section 7A, to the extent that such funds may be available for payment on account of the interest and principal of bonds secured hereby, shall, in such event, be turned over to the Trustee, or receiver, if any, appointed in any subsequent action, or proceeding, instituted for the benefit of all bondholders.

(f) All of the other provisions of this trust deed shall, in so far as the same are consistent with the terms of this Section 7A, apply to foreclosure brought under the provisions of this Section 7A.

ARTICLE X.

Liabilities, Duties, Powers and Rights of the Trustee.

SECTION 1. The recitals of fact contained herein and in the bonds issued hereunder shall be understood as made solely by the Company, and not as made, or vouched for, by the Trustee. The Trustee shall have no responsibility for the validity of the lien of this indenture, or the execution, or acknowledgment, thereof, nor as to the title, value, or extent, of the security afforded hereby, and shall be under no obligation to see to the recording, registration, filing, or refiling, of this instrument, or any instrument of further assurance, or to the giving of any notice thereof, or to see that any of the property intended, now or hereafter, to be conveyed in trust hereunder is subjected to the lien hereof, or to see to the use, or application, of the bonds or their proceeds.

SECTION 2. (a) The Trustee shall be under no obligation to recognize any person, firm, or corporation, as the holder, or owner, of any of the bonds secured hereby, or to do, or refrain from doing, any act pursuant to the request of any person, firm, or corporation, professing to be, or claiming to be, such holder, or owner, until such supposed holder, or owner, shall produce the said bonds and deposit the same with the Trustee. But, at all times, all powers and rights of action hereunder may be exercised and enforced by

the Trustee, at his election, without the possession, or production, of any of said bonds, or coupons, or proof of ownership thereof, at any time whatsoever.

(b) The Trustee shall not be answerable for the default, or misconduct, of any agent, or attorney, employed by him in and about the execution of this trust, if such agent, or attorney, shall have been selected with reasonable care.

(c) The Trustee shall not be personally liable for any debts contracted by him, nor for damages to persons, or property, incurred by him, nor for damages to persons, or property, of any kind whatsoever, or for salaries, or nonfulfillment of contracts, during any period wherein he shall manage the trust estate, or premises, upon entry.

SECTION 3. (a) The Trustee shall not be liable, in any way, for the consequence of any breach of the covenants herein contained, or for any act done, or anything omitted hereunder, by the Company, and, in no event, shall the Trustee be liable to any bondholder, except for gross negligence, or wilful misconduct, or neglect.

(b) It shall be no part of the duty of the Trustee to effect, or collect, insurance against fire, or other damage, upon any portion of said premises, or to renew any policies of insurance, or to inquire, or keep informed, as to the performance, or observance, of any covenant or agreement, upon the part of the Company, under this indenture, or to pay any taxes, assessments, or other charges upon the premises, or to do any other thing not affirmatively and expressly agreed to be done by him hereunder.

SECTION 4. (a) The Trustee shall not be under obligation to defend any suit, or proceedings, brought against him, by reason of any matter, or thing, connected with the trusts hereby created, or by reason of being the Trustee hereunder, or to take any action towards the execution, or enforcement, of any trust hereby created, unless reasonably indemnified by the Company, or by said bondholders, or some of them, to the satisfaction of the Trustee, against all loss, costs, damages and expenses, which might result therefrom, or be occasioned thereby; PROVIDED, HOWEVER, that nothing herein in this section contained shall affect any discretion herein given to the Trustee to determine whether any action shall be taken.

(b) Whenever the Trustee has demanded, or received, indemnity under the provisions of this trust deed, and it shall afterwards appear, in the judgment of the Trustee, that the indemnity so de-

manded, or received, is, or may become, insufficient, the Trustee shall not be required to take any further action hereunder, until additional indemnity shall have been furnished to said Trustee.

(c) The Trustee shall be entitled to be reimbursed for all proper outlays of every sort and nature, by him incurred in the discharge of said trust, or in defense of any suit, or proceeding, brought against him as Trustee hereunder, and to receive a reasonable and proper compensation for any duty that he may, at any time, perform in the discharge of said trust, or in defense of such proceeding, and all such fees, commissions, compensations and disbursements, including reasonable attorneys' fees, shall constitute a first lien upon said premises.

SECTION 5. The Trustee shall be entitled to act upon any notice, request, consent, certificate, bond, letter, telegram, or other instrument, or paper, believed by him to be genuine, and to have been properly executed, and shall be entitled, but not required, to receive, as conclusive proof of any fact, or matter, required to be ascertained by him thereunder, a certificate signed by the Company, unless it is otherwise specifically provided in this indenture, and any such certificate, or evidence, prescribed by this indenture, which the Trustee may accept, shall be full protection and justification for anything suffered, or done, by the Trustee, in good faith, in reliance thereon.

SECTION 6. (a) It is covenanted and agreed that, in all actions, suits, or proceedings, or dealings, or transactions, in any way affecting, or relating to, this indenture, or to the premises, or to the property, covered by the lien of this indenture, or any part thereof, or to the title thereto, the Trustee shall be deemed the representative of the bondholders, and, in no case, shall it be necessary to notify any bondholder, or to make any bondholder a party to any action, suit, or proceeding, for the purpose of binding or concluding him.

(b) The Trustee is hereby authorized and empowered to enter into any agreement with the Company modifying, amending, altering, releasing, waiving or supplementing any of the terms, conditions and provisions of this indenture, if he shall deem that the same is consistent with the best interests of the bondholders.

(c) The Trustee is, also, hereby authorized and empowered to consent to the renewal, replacement, or substitution, of any of the property covered by the lien of this indenture, as provided herein.

(d) The Trustee is expressly authorized and empowered to release any part of the premises, upon such terms and/or for such consideration as he may deem for the best interests of the bondholders, and, also, to substitute other securities, or properties, for any other securities, or properties, if any, from time to time held by the Trustee, or secured by this indenture.

(e) The Trustee is, also, hereby authorized and empowered to join with the Company in any instrument, or deed, dedicating any part of said premises for use as a public walk, highway, or alley, or parkway, or in subdividing, or platting, said premises, or any part thereof, or in vacating any now, or then existing, plat, or division, or any part thereof.

(f) The Trustee is, also, hereby authorized and empowered to join in and enter into any lawful contract, or arrangement, with the Company and owner, or owners, for the time being, of any adjoining premises, fixing any dividing, or boundary, line, which may be in dispute, or respecting the erection or construction of any party or division wall, or any party caissons, upon, or along, any dividing line between the said demised premises and any adjoining premises, including any contract terminating, abrogating, extending, or modifying, any such new, or existing, agreement.

(g) And it is hereby covenanted and agreed that the decision of the Trustee as to the necessity, or expediency, of any action, and any action taken by the Trustee, pursuant to the authority vested in him by this section, shall be conclusive and binding upon every bondholder and every person, at any time, claiming, or to claim, under this indenture, and, in no event, shall the assent of any bondholder, or person, as aforesaid, other than the Trustee, be required to give binding effect thereto.

(h) The foregoing powers, and all other powers conferred upon the Trustee, by this instrument, may be exercised, at any time, and from time to time, by the Trustee, in his absolute discretion, whenever, and as often as, the occasion therefor may arise. Provided, however, that the said powers shall be construed as optional with the Trustee, and shall not be deemed, in any sense, obligatory, or as imposing any affirmative duties, upon the Trustee.

SECTION 7. In case of any suit, or proceeding, in any way, relating to, or affecting, said mortgaged property, including any suit, or proceedings, in connection with the Torrens Act, so called, wherein said Trustee, or said bondholders, or any of them, shall be

a party, or parties, reasonable compensation for services of the Trustee and all court costs and reasonably necessary expenses incurred by the Trustee, including attorney's fees, stenographers' charges and costs of procuring abstracts of title and continuations thereof, and costs of procuring testimony and evidence and statements of witnesses and documentary evidence, if any, incurred by said Trustee in, or about, such suit, or proceeding, or in the preparation therefor, shall be allowed to and paid to the Trustee by the Company upon demand, and shall be a charge upon the mortgaged premises prior and paramount to the bonds hereby secured, and shall become so much additional indebtedness secured by this indenture, and, wherever possible, shall be provided for in any judgment, or decree, in such proceeding. Such indebtedness may, also, be charged against any account, or balance, the Company may, at any time, have with said Roe & Co., Inc., and immediately paid to the Trustee.

SECTION 8. (a) It is hereby further covenanted and agreed, and this trust is accepted upon the express condition, that the said Trustee shall not incur any liability, or responsibility, whatsoever, in consequence of permitting, or suffering, the Company to remain, or be, in possession of the mortgaged property, and to use and enjoy the same, nor shall he become liable, or responsible, for any destruction, loss, injury, or damage, which may be done, or happen, to the mortgaged property, either by said Company, or its agents, servants, lessees, or by any person, or persons, whatever, or by, or from, any accident, or any cause whatever.

(b) The Trustee may advise with legal counsel, and any action under this instrument taken, or suffered, in good faith, by the Trustee, in accordance with the opinion of such counsel, shall be conclusive upon the Company and upon all holders of the bonds and interest coupons secured by this indenture, and the Trustee shall be fully protected in respect thereof.

(c) The Trustee shall not be liable for any error of judgment, nor for any act done, or step taken, or omitted, nor for any mistakes of fact, or law, nor for anything which he may do, or refrain from doing, in good faith, nor, generally, shall he have any accountability hereunder except for his own wilful default.

(d) Any money received by the Trustee or Roe & Co., Inc., under any provision of this instrument, may be treated by him, or it, until required to pay out the same conformably herewith, as a

general deposit, without any liability for interest, except as herein otherwise provided.

SECTION 9. Nothing herein contained shall prevent the Trustee, or any successor in trust, individually and in any capacity other than as trustee hereunder, from purchasing, selling, holding, or otherwise dealing in, the bonds, or interest coupons, secured hereby.

ARTICLE XI.

Proof of Ownership of Bonds, Etc:

SECTION 1. (a) Any notice, request, or other instrument, required by this indenture to be signed or executed by bondholders may be in any number of concurrent instruments of similar tenor, and may be signed, or executed, by such bondholders in person, or by agent appointed in writing.

(b) As a condition for acting hereunder, the Trustee may, but without being obligated to do so, demand proof of the execution of any such instrument, and of the fact that any person claiming to be the owner of any of said bonds is such owner, and may further require the actual deposit of such bond, or bonds, with the Trustee.

(c) The facts and date of the execution of any such instrument may be proved by the certificate of any officer in any jurisdiction, who is authorized by the laws thereof to take acknowledgments of deeds within such jurisdiction, that the person signing such instrument acknowledged to him the execution thereof, or by any affidavit of a witness to such execution sworn to before any such officer.

(d) The amount of bonds transferable by delivery held by any person executing any such instrument as a bondholder, and the face amounts, and issue numbers, of the bonds held by such person, and the date of his holding the same, may be proved by a certificate executed by any responsible trust company, bank, bankers, or other depository, in a form approved by the Trustee, showing that, at the date therein mentioned, such person had upon deposit with such depository the bonds described in such certificate. Provided, however, that, at all times, the Trustee may require the actual deposit of such bond, or bonds, with the Trustee.

ARTICLE XII.

Successors in Trust.

SECTION 1. (a) In the event of the sickness, death, resignation, refusal, disqualification, or other inability, or incapacity, of the said Richard Roe, when and while his services shall be required under any provisions hereof, John Smith, of Montclair, New Jersey, shall be, and he is hereby, appointed his successor in the trust hereby created; and, in the event of the sickness, death, resignation, refusal, disqualification, or other inability, or incapacity, of the said John Smith, as successor in trust, when and while his services shall be required under any provision hereof, John Jones, of New York City, shall be, and he is hereby, appointed second successor in the trust hereby created.

(b) The recital by any successor in trust in any instrument executed by him in his official capacity, as aforesaid, of the absence, sickness, death, resignation, refusal, disqualification, or other inability, to act of the original Trustee, or successor in trust, shall be sufficient evidence thereof, when recorded in the office of the officials where this instrument shall have been recorded.

(c) The said John Smith or said John Jones, or both, or either of them, as such successor in trust, shall have identically the same title to said premises, and the same rights, powers and duties as hereby are vested in, or imposed, upon said Richard Roe.

SECTION 2. (a) The Trustee, or his successor, in trust, or any other Trustee hereafter appointed, may resign and be discharged of the trust hereby created, by written notice of such resignation sent by registered mail to the Company; and such resignation shall take effect sixty (60) days after the mailing of such notice.

(b) Any such Trustee may, also, be removed by an instrument in writing signed by the holders of not less than two-thirds in amount of the bonds hereby secured, and then outstanding, and recorded in the office of the officials where this instrument shall have been recorded.

SECTION 3. (a) In case, at any time, any Trustee, or successor in trust hereunder, shall refuse to act, resign, or be removed, or otherwise become incapable of acting, then, except as hereinabove otherwise provided, a successor, or successors, may be appointed by the holders of a majority in amount of the bonds then outstanding,

by an instrument signed by such bondholders and recorded in the offices where this instrument shall have been recorded.

(b) But, in case no such appointment shall be made by the bondholders, within ten (10) days after the occasion for such appointment shall have arisen, a new Trustee may, at any time thereafter, be selected and appointed by any court of competent jurisdiction in the premises, upon the application of the Company, or of the holder of any of said bonds, and upon such notice as such court shall direct, or as shall be in accordance with the rules and practice of such court. Such new trustee, if appointed by order of court, shall always be some responsible trust company, having a paid-up capital and surplus aggregating at least one million (\$1,000,000) dollars, if there be such a trust company willing and able to accept the trust upon reasonable, or customary, terms.

(c) Any new Trustee appointed hereunder shall execute, acknowledge and deliver to the Company an instrument, accepting such appointment hereunder, which said acceptance shall be duly recorded in the offices where this instrument shall have been recorded, and, thereupon, such new Trustee shall become vested with identically the same title to said mortgaged property and the same rights and powers, subject to the same duties, as the Trustee whom, or which, he, or it, is to succeed.

ARTICLE XIII.

Miscellaneous Provisions.

SECTION 1. Wherever, in this indenture, there is any provision for any security, or securities, indemnity, or indemnity bond, or surety bond, to be furnished to the Company, the Trustee, or Roe & Co., Inc., said Roe & Co., Inc., unless it is expressly to the contrary provided, is hereby expressly authorized to pass upon the requisite amount, sufficiency, propriety, and validity of the same, and the decision of said Roe & Co., Inc., shall be conclusive and binding upon said parties and the bondholders; provided, however, that said Roe & Co., Inc., shall not be liable for any action under this section in the absence of bad faith.

SECTION 2. Except as herein expressly provided to the contrary, no remedy, or right, herein, conferred upon, or reserved to, the Trustee, or to the holders of the bonds hereby secured, is intended to be to the exclusion of any other remedy, or right, but each and

every such remedy, or right, shall be cumulative, and shall be in addition to every other remedy, or right, given hereunder and now, or hereafter, existing, at law or in equity. No delay, or omission to exercise any remedy, or right, accruing upon any default, shall impair any such remedy, or right, or shall be construed to be a waiver of any such default, or acquiescence therein, nor shall it affect any subsequent default of the same, or of a different nature. Every such remedy, or right, may be exercised, from time to time, and as often as may be deemed expedient by the Trustee, or, as the case may be, by the holders of the bonds hereby secured.

SECTION 3. In case the Trustee, or bondholders, shall have proceeded to enforce any right under this indenture, by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued, or abandoned, for any reason, or shall have been determined adversely to the Trustee, and/or the bondholders, then, and in every such case, the Company and the Trustee and bondholders shall be restored to their former positions and rights hereunder.

SECTION 4. Until some default shall have been made in the payment of the principal, or interest, of the bonds hereby secured, or of some part thereof, or in the performance, or observance, of some covenant, or condition, to be kept by the Company under this indenture, and until such default shall have continued after notice, if any, as provided herein, the Company shall be suffered and permitted to retain actual possession of all the mortgaged property, and to manage, operate, use and enjoy the same and every part thereof, with the rights appertaining thereto, and to collect, receive, take, use and enjoy the earnings, income, rents, issues and profits thereof.

SECTION 5. (a) If the Company shall promptly pay, or cause to be paid, the full amount of said bonds, with interest thereon, as the same shall, respectively, mature, or shall have made the deposits necessary for the redemption of all of the bonds then outstanding and unpaid, in the manner provided for in this indenture **and in said bonds and coupons**, and shall, also, pay all other sums payable hereunder by the Company, and shall have kept and performed all the things required of it herein, all of the premises shall revert to the Company, and the estate, right, title and interest of the Trustee thereupon shall cease, determine and become void, and the Trustee, upon demand of the Company, but at the Company's cost and expense, shall prepare and execute proper instruments re-

leasing, satisfying and discharging the lien of this indenture. Such instrument shall be valid and effectual, in law, whether executed and delivered before, or after, maturity of said bonds, and without the necessity of, and regardless of, the production, surrender, or delivery, or cancellation, of any of said bonds.

(b) The Trustee shall not be liable for any release, or releases, improvidently executed by him, in supposed compliance with the terms of this indenture.

SECTION 6. It is further covenanted and agreed that, in case the power of eminent domain is exercised and all, or a part, of said mortgaged premises is taken thereunder, then whatever moneys shall thereby become due the Company (not, however, exceeding the amount necessary to retire all bonds issued hereunder and then outstanding, including a premium upon bonds not due as provided in Article II, Section 5, hereof, and including any income tax due hereunder the holder, or holders, of any bond, or bonds, and all other sums sufficient to entitle the Company to a release hereof) shall be paid to the Trustee, at his election, and be used toward the payment of interest and principal then due upon the bonds hereby secured, and of other indebtedness secured hereby, and toward the redemption of such bonds as may be called by the Company, under the provisions hereof, and toward the payment of the others of said bonds to become subsequently due, as they respectively mature, and to the interest and income tax payable thereon, or, in the discretion of the Trustee, may be used by him in whole, or in part, toward the cost of repairing, or restoring, and building on said premises which shall have been damaged, as the result of the exercise of the power of eminent domain. Any sums received by the Trustee shall not bear interest.

SECTION 7. (a) The covenants, agreements, conditions, promises and undertakings in this indenture, including the covenants in regard to insurance, shall extend to and be binding upon the successors and assigns of the Company, the same as if they were, in every case, named and expressed, and all of the covenants hereof shall bind them, and each of them, jointly and severally.

(b) All of the covenants, conditions and provisions hereof shall be held to be for the sole and exclusive benefit of the parties hereto, and their successors, or assigns, and of the holders of said bonds and coupons.

(c) No transfer of said mortgaged premises by the Company

shall operate to release, or discharge, the Company, it being agreed that the liability of the Company shall continue as principal, until all of said bonds and coupons shall have been paid in full, notwithstanding any transfer of said premises.

SECTION 8. (a) Any notices, or communications, which the Trustee, or the bondholders, shall desire to give, or serve upon, the Company, may be given, or served, by delivering a true copy thereof to any officer of the Company, or by sending a true copy by registered mail addressed to it at No. 11½ Broadway, New York City.

(b) Any notices, or communications, which the Company may desire to give, or serve upon, the Trustee shall be served personally, by delivering a true copy thereof to the Trustee, or by leaving a true copy thereof for the Trustee with someone apparently in authority at the office of Roe & Co., Inc., at No. 11½ William Street, New York City, or at such other address in New York City as the Trustee may, from time to time, furnish to the Company in writing.

(c) In the event that Roe & Co., Inc., shall not maintain an office at said address, or that the Trustee shall not furnish the Company with any other address in writing, any of said notices, or communications, may be served, or given, by sending the same by registered mail addressed to such Trustee, in care of Roe & Co., Inc., at No. 11½ William Street, New York City.

(d) Any individual successor in trust may be served with any such notices, or communications, by sending the same by registered mail addressed to such successor in trust, at such address as said successor in trust may, from time to time, furnish to the Company in writing, and, in default of appointing such an address, any such notices or communications may be sent, or served, by sending the same by registered mail, addressed to such individual successor in trust, at his last known place of business, or residence. And if the Company cannot, with reasonable diligence, find a last known place of residence or business of any such successor in trust, any such notices, or communications, may be served, by sending the same by registered mail, addressed to such successor, in care of Roe & Co., Inc., at No. 11½ William Street, New York City.

(e) Any notice, or communication, to the Trustee, or any individual successor, which may be sent by registered mail, in accord-

ance with the foregoing provisions, shall have the same effect as if the notice had been personally served.

(f) Any corporate successor in trust may be served with any such notice, or communication, by delivering the same to the trust officer, or any assistant trust officer, the secretary, or any assistant secretary, or the president, or any vice-president, of such corporation.

SECTION 9. (a) Wherever, in this indenture, reference is made to the Company, Trustee, or to said Roe & Co., Inc., it shall be held to apply, also, to the successor, successors, or assigns, of the party referred to. Reference to Roe & Co., Inc., shall refer to Roe & Co., Inc., a New York corporation.

(b) Wherever, in this indenture, the word "bond," or "bonds," or "bondholder," or "bondholders," is used, it may, unless otherwise specifically provided, be held to include the singular as well as the plural number.

(c) The term "majority," or the term "fifty-one per cent," shall signify the majority, or fifty-one per cent in amount, respectively, whether so expressed or not.

(d) Wherever, in this indenture, or in the bonds, the word "holder," or "owner," or "bearer," is used, it shall be construed, in the case of a registered bond, to mean the party in whose name the bond is registered.

(e) The word "Trustee" shall be held and construed to mean the Trustee, for the time being, whether original, or successor, in trust.

(f) The rule *ejusdem generis* shall not be observed in construing any provision of this indenture.

SECTION 10. (a) The invalidity of any one, or more, of the phrases, sentences, clauses, or paragraphs, contained in this indenture, shall not affect the remaining portions of this indenture, or any part thereof, all of which are inserted conditionally on their being held valid in law, and in the event that one, or more, of the phrases, sentences, clauses, or paragraphs, contained herein should be invalid, this instrument shall be construed as if such invalid phrase, or phrases, sentence, or sentences, clause, or clauses, and paragraph, or paragraphs, had not been inserted.

(b) This mortgage is made subject to the rights of said lessor, Koe & Co., and, if any of the provisions hereof should be construed

in contravention thereof, such provision, or provisions, to that extent, shall be taken as void and as of no effect whatsoever.

SECTION 11. (a) The Company hereby expressly authorizes said Roe & Co., Inc., to make, in its behalf, any and all deductions required by said United States income tax law, or under any ruling thereon, or regulation thereof, as provided hereunder, and authorizes it to make any and all reports, statements and returns in its behalf, which may be required by said laws, rulings, or regulations:

(b) It is expressly understood and agreed, however, by the said Company that it shall not be entitled, at any time, to the names and addresses of any legal holder, or holders, of the bonds, at any time outstanding, secured by this trust deed.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed in its corporate name, by its President, and to be sealed with its corporate seal, attested by its Secretary, pursuant to authority given by its board of directors, and the said Richard Roe, to evidence his acceptance of the trust hereby created, has hereunto set his hand and seal, the day and year first above written.

Doe Corporation,

By John Doe,

President.

(Seal)

Attest:

James Green,
Secretary.

Richard Roe (L.S.).

SECTION 3.—MISCELLANY.

No. 312.

Agreement to execute adjustment mortgage to secure issue of seven per cent adjustment mortgage gold bonds, upon obtaining consent of stockholders, whereunder railroad company agrees to offer the same for sale to its stockholders, and syndicate is formed to underwrite the issue in return for commission.⁶

THIS AGREEMENT, made January 5, 1923, between Rio Grande Railroad Company, a corporation, duly organized under the laws

⁶ Cf. *Parker v. New Orleans, B. R. & V. R. Co.* (1888), 33 Fed. Rep. 693; *Minot v. Burroughs* (1916), 223 Mass. 595, 112 N. E. 620; *People's Trust Co. v. Schenck* (1909), 195 N. Y. 398, 88 N. E. 647, 133 Am. St. Rep. 807; *Real Estate Trust Co. v. Ritter-Conley Mfg. Co.* (1909), 223 Pa. St. 350, 72 Atl. 695.

of the States of Colorado and Utah, and having its principal place of business at No. 111½ Main Street, Denver, Colorado (herein called the "Railroad Company"), party of the first part, and Doe & Co., and William Roe & Co., each of whom has its principal place of business at No. 271½ Broadway, Borough of Manhattan, New York City (herein called the "Managers"), parties of the second part, and the Subscribers hereto, severally (each of whom is herein referred to as a "Subscriber," and all of whom, together with the Managers, constitute the "Syndicate"), parties of the third part, WITNESSETH:

WHEREAS, the Railroad Company heretofore executed a First and Refunding Mortgage to the Doe Trust Company, Trustee, dated August 1, 1913 (herein referred to as the "Refunding Mortgage"), in order to secure an issue of First and Refunding Mortgage Gold Bonds (herein referred to as the "refunding bonds"), limited to the principal amount of \$150,000,000 at any one time outstanding; and

WHEREAS, the Railroad Company has determined to authorize the issue of Seven Per Cent Adjustment Mortgage Gold Bonds (herein referred to as "adjustment bonds" or "bonds"), not to exceed \$25,000,000 in principal amount at any one time outstanding, and to secure the same by a mortgage and deed of trust to the Roe Trust Company, Trustee (herein referred to as the "Adjustment Mortgage"), and to offer \$10,000,000 in principal amount of said bonds to its stockholders at par and accrued interest, and has asked the Managers to form a syndicate to underwrite the sale of said \$10,000,000 of bonds and to buy such of them as its stockholders shall not subscribe for, and has agreed to compensate the Managers for forming such syndicate; and

WHEREAS, the Railroad Company, at a meeting of its Board of Directors, duly and regularly called and held, duly authorized the execution of this agreement and directed that a meeting of its stockholders be held to authorize said issue of bonds and the Adjustment Mortgage, and to approve the offer to its stockholders and the making of this agreement:

Now, THEREFORE, THIS AGREEMENT WITNESSETH, that, in consideration of the mutual covenants and agreements herein contained, the parties hereto respectively covenant and agree as follows, the Subscribers severally agreeing with one another and with the Railroad Company and with the Managers, and every Sub-

scriber and every party agreeing for himself, and not for any other:

FIRST. (a) The Railroad Company agrees that it will forthwith create an issue of Seven Per Cent Adjustment Mortgage Gold Bonds, limited to the principal amount of \$25,000,000 at any one time outstanding, whereof \$10,000,000 in principal amount shall be subject to immediate issue and sale.

(b) Said bonds shall be the duly authorized and validly issued obligations of the Railroad Company, shall bear date as of April 1, 1923, shall be payable April 1, 1943, and shall bear cumulative interest from April 1, 1923, to April 1, 1943, at the rate of 7% per annum, the first semi-annual installment to be payable absolutely on October 1, 1923, and thereafter such amount of interest to be paid on April 1, 1924, and on each succeeding October 1 and April 1 as the Board of Directors of the Railroad Company, pursuant to the provisions of the Adjustment Mortgage, shall ascertain, determine and declare to be payable, for the six months' period ending on such April 1 or such October 1 as the case may be, out of the surplus net earnings and income of the Railroad Company, during the six months ending December 31 or June 30 immediately preceding such April 1 or October 1, as the case may be. The provisions of the Adjustment Mortgage having reference to the ascertainment of income and the declaration and payment of interest shall be substantially those contained in Article Four of the draft of said Adjustment Mortgage, which has been prepared by counsel for the Managers and counsel for the Railroad Company, printed copies of which said article have been initialed by said counsel and lodged with the Managers and with the Railroad Company. Each of the semi-annual installments of interest on the coupon bonds shall be represented by two coupons, each for \$17.50.

(c) Both principal and interest of said bonds shall be payable at the office, or agency, of the Railroad Company in the Borough of Manhattan, in the City of New York, in gold coin of the United States of America of, or equal to, the present standard of weight and fineness, and, also, in London, England, in pounds sterling, and in Amsterdam, Holland, in guilders, and shall be payable without deduction for any taxes that the Railroad Company, or the Trustee, may be required, or permitted, by law to pay thereon, or to retain therefrom.

(d) All of said issue of bonds at any time outstanding (and,

also, any part thereof less than all, but not less than \$500,000 in principal amount in any single installment) shall be redeemable upon any interest payment day, upon notice of not less than 90 days given by the Railroad Company, at 115% of the principal amount thereof, together with cumulative interest, from April 1, 1923, to the date fixed for such redemption, then remaining unpaid.

(e) The Railroad Company will, in order to secure said issue of bonds, forthwith authorize and execute a mortgage and deed of trust to the Roe Trust Company, Trustee, which shall be known as its "Adjustment Mortgage" and which shall bear date on or about April 1, 1923, and shall be a valid lien upon all of its railways and other physical property situate in the States of Colorado, Utah and New Mexico, and upon all of its equipment wheresoever located, including all such railways, equipment and other physical property that shall be owned by the Railroad Company at the date of the Adjustment Mortgage and all thereof that shall be thereafter acquired with any of the adjustment bonds, or proceeds thereof, or on account of which adjustment bonds shall be thereafter authenticated and delivered, or the proceeds of adjustment bonds shall be thereafter paid out, and upon all replacements, renewals, additions, improvements, or betterments, at the date of the Adjustment Mortgage, or thereafter made to any such railways, equipment or other physical property, and upon all stocks, bonds and other securities (including obligations of the Western Pacific Railway Company), which shall be thereafter acquired with any of the adjustment bonds, or proceeds thereof, or on account of which adjustment bonds shall be thereafter authenticated and delivered, or the proceeds of adjustment bonds shall be thereafter paid out, and upon, and there shall be pledged thereunder, all claims of the Railroad Company existing at the date of the Adjustment Mortgage against said Western Pacific Railway Company and not pledged, or required, to be pledged under the Refunding Mortgage, and upon such other stocks, bonds and securities, if any, as shall be specifically pledged under the Adjustment Mortgage by agreement between the Railroad Company and the Managers, and upon the net proceeds of adjustment bonds which, while awaiting expenditure, shall be held upon deposit under the Adjustment Mortgage; *subject*, however, to such exceptions, if any (of operating supplies, fuel and other like assets), as the Railroad Company and the Managers shall hereafter agree upon; *provided*,

always, that the Adjustment Mortgage shall, at all times, be a valid lien upon all of the railways, equipment, rights, stocks, bonds and other securities and property of every description that shall, at the time, be subject to the lien of the Refunding Mortgage. The Adjustment Mortgage shall be a valid lien, also, upon, and there shall be pledged thereunder, all refunding bonds which shall be authenticated and delivered against expenditures of the proceeds of any of the first \$10,000,000 of adjustment bonds used for acquiring new equipment, and upon the proceeds of such refunding bonds, and upon any further refunding bonds substituted therefor; and it shall provide for the deposit with the Trustee of the Adjustment Mortgage of all other refunding bonds which shall be authenticated and delivered against expenditures of the proceeds of any of the first \$10,000,000 of adjustment bonds for other purposes.

(f) Said mortgage shall, among other things, provide in substance:

(1) That the adjustment bonds and their proceeds, after payment of commissions and compensation in connection with their sale, shall be available only (aa) for betterments, improvements and extensions and otherwise generally for some one, or more, of the purposes enumerated in Sections 5 and 6 of Article Two of the Refunding Mortgage; or (bb) for protecting the Railroad Company's liability as guarantor upon a certain loan made by the Blank Trust Company of New York to the Midland Railway Company of an authorized amount of \$575,000, of which \$480,000 has been advanced, said loan being secured by the pledge by said Midland Railway Company of \$523,000 face amount of its First Mortgage Bonds and 7,371½ shares of the capital stock of The Grande Junction Railway Company, *provided* that, and to the extent that, such liability may be protected by acquiring and subjecting to the lien of the Adjustment Mortgage by pledge thereunder either the note of said The Midland Railway Company accompanied by the securities collateral thereto, or said securities collateral to said note; or (cc) for the acquisition of obligations of The Grande Southern Railroad Company, the proceeds whereof shall be used to cover deficits occasioned by repairs and replacements (subsequent to October 1, 1922, and prior to July 1, 1923) to its railways and other properties consequent upon flood damages, *provided* that all obligations so acquired shall be pledged under the Adjustment Mortgage; or (dd) to the extent hereinafter mentioned for the

acquisition of the obligations of the Western Pacific Railway Company; or for some one, or more, of said purposes; *provided*, however, that the Railroad Company may, at any time, and from time to time, sell for cash any, or all, of the adjustment bonds, at such prices as may be approved by its Board of Directors, and that the Trustee shall authenticate and deliver the bonds so sold to the Railroad Company, or on its order, upon deposit, subject to the Adjustment Mortgage, or the proceeds thereof (less any commissions, or compensation, paid, or to be paid, upon, or in connection with, any such sale) with such banks, bankers, trust companies and other depositaries as may be designated by the Railroad Company and shall not be disapproved of by the Trustee;

(2) That the adjustment bonds shall be issued, and the deposited proceeds shall be paid out, at the rate of not exceeding one \$1,000 bond, or the net proceeds, thereof for every \$1,000 of cash certified to have been expended, or of absolute money liability certified to have been incurred for any of such purposes;

(3) That, so far as the expenditure by the Railroad Company of moneys received from the sale of the first \$10,000,000 of adjustment bonds shall enable the Railroad Company, upon complying with the provisions of the Refunding Mortgage, to obtain refunding bonds under the provisions of Article Two of the Refunding Mortgage, the Railroad Company will, in every instance, immediately take all steps necessary to procure the authentication and delivery of refunding bonds and will deposit such refunding bonds with the Trustee of the Adjustment Mortgage, with the right, however, upon the part of the Railroad Company, at any time, and from time to time, upon certifying to the Trustee that it has sold any of such refunding bonds for cash at prices approved of by its Board of Directors, and upon depositing the proceeds thereof with depositaries under the Adjustment Mortgage, simultaneously to receive such refunding bonds, and with the further right upon the part of the Railroad Company, upon furnishing certificate in the manner to be provided in the Adjustment Mortgage as to the purposes to which the same are to be applied (which shall assure their application to such purposes, or their return to said Trustee in default thereof), to receive such refunding bonds so deposited in case no sale of them has been made, or to receive their proceeds in case sale of them has been made, and to apply the same to any proper corporate purpose (including the acquisition of the obliga-

tions of the Western Pacific Railway Company), except (a) payment of any expense, or charge, which, under the system of accounting adopted by the Interstate Commerce Commission, is chargeable to operation of the railways, or other operations of the Railroad Company, or any other corporation, (b) interest on any obligations, which are not secured by liens senior to the lien of the Adjustment Mortgage and (c) payment of dividends on the capital stock of the Railroad Company, or any distribution to its stockholders, or to the stockholders of any other corporation; *provided*, however, that refunding bonds obtained on account of expenditures of the proceeds of adjustment bonds for equipment, and the proceeds of such refunding bonds, shall be applied only to the purchase of further equipment, additional refunding bonds being obtained on account of such purchase of further equipment and deposited under the Adjustment Mortgage and being used and applied in like manner and not otherwise, and successive purchases of equipment and substitution of refunding bonds shall be made in like manner; and that the Railroad Company will not obtain, or suffer to be authenticated, or delivered, under the provisions of Article Two of the Refunding Mortgage, any refunding bonds on account of expenditures of the proceeds of any adjustment bonds, except the \$10,000,000 of adjustment bonds first to be issued as herein provided.

(4) That all certificates and requisitions under the Adjustment Mortgage, calling for the authentication and delivery by the Trustee of adjustment bonds, or for the payment by the Trustee, or other depositaries, of the deposited proceeds of the adjustment bonds, or for the delivery by the Trustee of refunding bonds deposited under the Adjustment Mortgage, or for the payment by the Trustee or other depositaries of the proceeds of such refunding bonds, shall be approved of in writing by the Chairman of the Board of Directors of the Railroad Company.

(g) Said Adjustment Mortgage shall contain such other provisions, not inconsistent with the foregoing, as are usually contained in mortgages of like character and shall be in such form as counsel for the Managers shall approve of.

(h) The adjustment bonds and said Adjustment Mortgage may, instead of bearing date as of April 1, 1923, bear date as of any date subsequent thereto and prior to June 1, 1923, which the Managers and the Railroad Company shall hereafter agree upon, and

in such case the bonds may bear cumulative interest from such later date if so agreed upon.

(i) The Railroad Company will cause the original issue of \$10,000,000 principal amount of said bonds to be listed on the New York Stock Exchange as soon as practicable.

SECOND. (a) The Railroad Company agrees that the proceeds of \$2,500,000 in principal amount, and no more, of said \$10,000,000 of Seven Per Cent Adjustment Mortgage Gold Bonds, to be issued immediately, shall be used to acquire the obligations of the Western Pacific Railway Company, under an agreement to be entered into between the Railroad Company and the said Western Pacific Railway Company, whereby the proceeds of \$1,250,000 in principal amount of said bonds (or so much thereof as shall be necessary) shall be used to pay the interest falling due September 1, 1923, on the Western Pacific Railway Company First Mortgage Five Per Cent Gold Bonds, in case, and in so far as, the current net revenues of said Western Pacific Railway Company shall be inadequate to pay the same, as determined by the Auditor appointed and acting under the provisions of the agreement commonly known as "Contract B" between the Rio Grande Railroad Company, The Grande Western Railway Company, Western Pacific Railway Company, and Green Trust Company, dated June 23, 1915, and the remainder of the proceeds of said \$2,500,000 principal amount of said bonds shall be used by said Western Pacific Railway Company for, or towards one, or more, of the following purposes: (1) completing its low grade line, known as Arnold's Loop, at Silver Zone Pass, about 145 miles west of Salt Lake City, the estimated cost of which work is about \$570,000; (2) completing its main repair shops at Sacramento, California, the estimated cost of which work is about \$300,000; (3) acquiring a first-class modern ferry-boat for use in San Francisco Bay, the estimated cost of which is about \$280,000; (4) paying interest falling due subsequently to September 1, 1923, on the Western Pacific Railroad Company's First Mortgage Five Per Cent Gold Bonds, in case, and in so far as, the current revenues of said Western Pacific Railway Company, as determined by said Auditor, shall be inadequate to pay the same.

(b) The Railroad Company agrees to use the proceeds, or so much thereof as shall be necessary, of the remaining \$7,500,000 in principal amount of said \$10,000,000 of Seven Per Cent Adjust-

ment Mortgage Gold Bonds to be issued immediately as aforesaid, (1) to build a detour line, having a gradient of approximately 2%, from Soldier's Summit, Utah, to a point at, or near, Tucker, Utah, a distance of approximately 14 miles, at an estimated cost of about \$1,300,000; (2) to continue said detour line from said point at, or near, Tucker, Utah, parallel with, and adjacent to, its existing single main track to Thistle, Utah, a distance of approximately 16½ miles, at an estimated cost of \$500,000; (3) to build a second track parallel with, and adjacent to, its main track between Thistle, Utah, and Midvale, Utah, a distance of approximately 54 miles, at an estimated cost of about \$1,600,000; (4) to build a second main track parallel with, and adjacent to, its present single main track between Castle Gate, Utah, and Kyune, Utah, a distance of approximately 7½ miles, at an estimated cost of about \$300,000; (5) to procure equipment of an estimated cost of about \$2,500,000, including about 28 first-class heavy locomotives, about 1,500 box and stock cars, and about 50 caboose cars.

(c) The balance, if any, of the proceeds of said \$7,500,000 in principal amount of bonds may be used by the Railroad Company in any manner, which shall be approved of in writing by the Managers, but shall not be used for any purpose not so approved of.

(d) The Railroad Company shall be authorized (1) out of the second \$10,000,000 in principal amount of said adjustment bonds that shall be issued to use \$2,500,000 in principal amount thereof, or the proceeds thereof, and (2) out of the remaining \$5,000,000 in principal amount of adjustment bonds to use \$1,250,000 in principal amount thereof, or the proceeds thereof, to buy obligations of the Western Pacific Railway Company, under an agreement with said Western Pacific Railway Company, whereby such proceeds shall be used (aa) for the construction, acquisition, or equipment, of branch lines of railroad connecting with the lines of said Western Pacific Railway Company, or of terminals, docks, wharves, ferries and other additional property (including equipment), for use in connection with any of the lines of the Western Pacific Railway Company, and for the betterment, improvement, and development of any of its railroads or property; or (bb) for the acquisition by the Western Pacific Railway Company of substantially all of the bonds and other indebtedness and substantially all of the outstanding capital stock (except the number of shares necessary to qualify directors) of any company, or companies, owning any

line of railroad forming, or thereupon to form, a branch line of railroad connecting with, or an extension of, any line, or lines, of the Western Pacific Railway Company; or (cc) for paying interest on the Western Pacific Railway Company's First Mortgage Five Per Cent Gold Bonds, in case and in so far, as current net revenues of said Western Pacific Railway Company shall be inadequate to pay the same, as determined by the Auditor aforesaid; or for some one, or more, of said purposes.

(e) Notwithstanding anything contained in this agreement, the Railroad Company and the Managers may, by agreement in writing, at any time, or from time to time (but, after the execution of the Adjustment Mortgage, only so far as shall be consistent with the terms thereof), alter the purposes for which, and the proportions in which, the proceeds of any of the \$25,000,000 of Seven Per Cent Adjustment Mortgage Gold Bonds shall, or may, be used.

THIRD. (a) The Railroad Company further agrees that it will offer to its stockholders of record, as of the closing of business on May 11, 1923, the privilege, and will issue to them rights entitling them, on, or before, the closing of business on the day, not later than June 1, 1923, that shall be fixed by the Railroad Company for payment of the first installment of the purchase price thereof, to subscribe for and purchase in amounts proportioned to their several holdings of stock in the Railroad Company, at the closing of business on said May 11, 1923, \$10,000,000 in principal amount of said Seven Per Cent Adjustment Mortgage Gold Bonds, at face value and accrued interest at the rate of 7% per annum, *provided* that stockholders subscribing for less than \$1,000 in principal amount of said bonds, or for amounts including fractions thereof, shall be entitled to receive only bond scrip for the fractional amounts of bonds so subscribed for, which bond scrip shall be entitled to no security, or benefits, under the Adjustment Mortgage, but shall be convertible into bonds, when presented in amounts of \$1,000, or multiples thereof.

(b) All subscriptions for said bonds shall be lodged with the Roe Trust Company, No. 26½ Broad Street, Borough of Manhattan, New York City, and the purchase price of said bonds shall be payable by the subscribing stockholders to said Roe Trust Company (which, for the purpose of receiving the same, shall act as the agent of the Railroad Company), in four equal installments of 25% each, at the times following: the first installment upon sub-

scription, the second installment on August 1, 1923, the third installment on September 3, 1923, and the fourth installment on October 1, 1923. With each such installment, there shall be paid accrued interest upon the bonds represented by such installment. Each stockholder shall have the privilege of paying all then unmatured installments of his subscription upon any of said dates, *provided* that, in case of any such payment of an installment in advance of the date hereinabove fixed for such payment, such stockholder shall pay, in addition to the interest then accrued upon the amount of bonds representing such prepaid installment, interest at the rate of 2% per annum upon said amount of bonds from the date of such prepayment to the date herein fixed for the payment of such installment. But no subscription shall be valid, which is not accompanied by said first installment of 25% of the purchase price of the bonds subscribed for.

(c) The bonds (with all unmatured, but no matured, coupons annexed) shall be delivered, through said Roe Trust Company, as hereinafter provided, to the subscribing stockholders, upon payment of the entire purchase price and upon surrender of all receipts issued for prior payments. In case of the failure of any stockholder, his representatives, or assigns, to pay any of the installments of the purchase price of the bonds subscribed for by him, or any part of such installment, he shall thereafter have no rights whatever in the bonds subscribed for by him, whether or not any of them shall have been delivered to the Roe Trust Company as contemplated hereby.

(d) The Railroad Company will, simultaneously with the execution of the Adjustment Mortgage, designate such banks, bankers and trust companies, as shall be agreed upon between the Railroad Company and the Managers, as depositaries, under the Adjustment Mortgage, of the proceeds of said \$10,000,000 in principal amount of adjustment bonds to be issued immediately as aforesaid.

(e) Immediately after the closing of business on the day fixed for the payment by the stockholders of the first installment of the purchase price of the bonds, said Roe Trust Company shall, out of the said first installment, pay to the Managers, the Syndicate's commission of \$300,000, or so much of said commission as said first installment shall suffice to pay, and the Managers, for the Syndicate, shall receipt to the Railway Company therefor, and said Roe Trust Company shall turn over the remainder of

said first installment, if any (exclusive of amounts received on account of interest), to the Trustee, or the depositaries, under the Adjustment Mortgage.

(f) Said Roe Trust Company shall, at the same time, notify the Railroad Company of the aggregate amount of subscriptions for adjustment bonds that shall have been received from stockholders, pursuant to, and in compliance with, the terms of said offer, and, also, of the aggregate amount of cash that shall have been received by it as the first installment of the purchase price of such bonds (including payments of the entire purchase price, if any, and distinguishing between payments on account of principal and payments on account of interest), and the Railroad Company shall thereupon forthwith deliver to said Roe Trust Company adjustment bonds (with all unmatured coupons attached) equal in principal amount to the amount of cash so received (exclusive of amounts received on account of interest), which bonds shall be received and held by said Roe Trust Company, for delivery to the stockholders, in case of, and upon, payment of their respective subscriptions in full as herein provided.

(g) Likewise, immediately after the closing of business on the days upon which the three other installments of the purchase price of adjustment bonds subscribed for by stockholders shall be payable, that is to say, upon August 1, 1923, September 3, 1923, and October 1, 1923, said Roe Trust Company shall notify the Railroad Company of the aggregate amount of cash that shall have been received by it as the second, third or fourth installment (as the case may be) of the purchase price of such bonds (including payments of the entire purchase price, if any, and distinguishing between payments on account of principal and payments on account of interest), and the Railroad Company shall, thereupon, in each such case, forthwith deliver to said Roe Trust Company a principal amount of adjustment bonds equal to such amount of cash (exclusive of amounts received on account of interest), which bonds shall be received and held by said Roe Trust Company for delivery to the stockholders, in case of, and upon, payment of their respective subscriptions in full as herein provided; and said Roe Trust Company shall, in each such case, turn over to the Trustee, or the depositaries, under the Adjustment Mortgage, the amount of cash (exclusive of amounts received on account of interest) so received from the stockholders. Any adjustment bonds

so received and held by said Roe Trust Company for delivery to the subscribing stockholders shall, in case the Railroad Company shall thereafter, for any reason, become unable to make delivery of the balance of the adjustment bonds subscribed for by the stockholders, be delivered by said Roe Trust Company to the subscribing stockholders (not in default) in proportion to the payments (exclusive of amounts paid on account of interest) made by them respectively. In case any stockholder shall fail to pay any of the installments of the purchase price of the bonds subscribed for by him, or any part of any such installment, a principal amount of bonds of those theretofore delivered to said Roe Trust Company for subscribing stockholders, equal to the amount of the payments made on account of such defaulted subscription, shall be delivered by said Roe Trust Company to or upon the order of the Railroad Company.

(h) Every provision herein contained, having reference to subscriptions, or payments, or defaults, by stockholders, or deliveries, or payments, to them, shall be deemed to cover, also, like subscriptions, payments and defaults by, and deliveries and payments to, the personal representatives and the transferees of the rights of such stockholders, as the case may require.

(i) The Railroad Company agrees that the offer to its stockholders of adjustment bonds for subscription by them shall be made in manner, and upon terms, consistent with the provisions hereof, with respect thereto, and that all of said provisions shall be observed in matters connected with such stockholders' subscriptions, and the payment, and satisfaction thereof, and that it will cause said Roe Trust Company to comply with such provisions, so far as they refer to said trust company.

FOURTH. (a) The Railroad Company further agrees to cause to be paid to the Syndicate, as hereinabove provided, a cash commission of 3% on the principal amount of said \$10,000,000. of bonds to be underwritten as aforesaid—that is to say, the sum of \$300,000—and that said commission shall be in addition to the amount which the Railroad Company has agreed to pay to the Managers for organizing the Syndicate. Said commission shall be paid to the Managers for the Syndicate, out of the first installment of the stockholders' subscriptions, and, if and to the extent that such first installment shall not be sufficient therefor, out of the first Syndi-

cate payment—all as provided in paragraphs Third and Fifth hereof.

(b) The Railroad Company will also pay all the fees of counsel for services performed in, and their disbursements in connection with, preparing or assisting to prepare, or otherwise in connection with, the bonds, the Adjustment Mortgage or any of the instruments to be executed or proceedings to be taken by the Railroad Company connected therewith or contemplated hereby, and also one-half of the fees and disbursements of counsel for and in connection with the execution and preparation of this agreement, but shall not be under obligation to pay or refund any expenses incurred by the Managers or the Syndicate for the purposes of the Syndicate as such.

FIFTH. (a) The Subscribers hereby form a Syndicate for the purpose of underwriting and guaranteeing to the Railroad Company the sale of said \$10,000,000 of adjustment bonds to be offered to the stockholders of the Railroad Company, as aforesaid, and of buying, at the same price at which they are to be offered to the stockholders, such of said \$10,000,000 of adjustment bonds as shall not be subscribed for by the stockholders of the Railroad Company pursuant to such offer.

(b) The Managers, within 10 days from the date hereof (*provided* the Managers shall receive from the Railroad Company a letter presenting the results heretofore estimated by engineering and accounting officers of the Railroad Company of the proposed detour line from Soldier's Summit, Utah, to a point at, or near, Tucker, Utah, and from said point near Tucker to Thistle, Utah, and, in addition thereto, presenting the views of the Railroad Company as to the advantages that will accrue by constructing the proposed second main track between Thistle, Utah, and Midvale, Utah, and between Castle Gate, Utah, and Kyune, Utah, and the reasons, which prompt the Railroad Company to acquire the additional equipment of an estimated cost of \$2,500,000, and the reasons, which prompt the Railroad Company in the expenditure of the proceeds of, approximately \$2,500,000 of adjustment bonds for the purposes of the Western Pacific Railway Company, and *provided*, further, that the letter so received shall be satisfactory to the Managers), shall submit to the Railroad Company a list of the Subscribers to the Syndicate and of the amounts of their respective subscriptions, which shall aggregate in all \$10,000,000

principal amount of bonds. In case such list shall be approved in writing by the Chairman of the Board of Directors of the Railroad Company, within 3 days after the delivery thereof to him, this agreement, when signed by such Subscribers for such amounts shall (subject to the approval of the stockholders of the Railroad Company at the meeting to be held on, or about, April 27th, 1923) become operative and absolutely binding upon the Managers, to the extent of their obligations hereunder, and upon each and every member of the Syndicate, to the extent of his subscription hereto, and shall, among other things, constitute an unconditional agreement, upon behalf of each member of the Syndicate, for the underwriting, upon the conditions herein expressed, of such proportion of said \$10,000,000 of adjustment bonds as the amount of his subscription to the Syndicate shall bear to the aggregate amount of the subscriptions thereto of all of the members of the Syndicate, and for the purchase by him, and, on behalf of the Railroad Company, for the sale to him, upon the conditions herein expressed, of such proportion of the part of said \$10,000,000 of adjustment bonds that the Syndicate may be required to take, pursuant to the provisions hereof, as the amount of his subscription shall bear to said aggregate amount of the subscriptions hereto.

(c) Each of the Subscribers agrees to pay to the Managers, when, and as, called for by written notice (in each case to be mailed by the Managers to the Subscribers), without reference to the actual receipt, or possession, by the Managers, or subscribers, of any of such bonds, the amount, or amounts, so called for, not exceeding in the aggregate the purchase price of the principal amount of bonds set opposite the signature of such Subscriber, and accrued interest, such purchase price to be payable at the office of Doe & Co., No. 24½ Broad Street, New York City, in four equal installments of 25% each (in each case with accrued interest upon the amount of bonds representing such installment), at the times following:

The first installment, upon demand of the Managers, after ascertainment of the actual net Syndicate obligation, but not earlier thanJune 10, 1923
 The second installment.....August 1, 1923
 The third installment.....September 3, 1923
 The fourth installment.....October 1, 1923
provided, however, that no delay in calling for the payment of any

installment of any subscription shall be deemed to release the Subscriber, or any transferee, from his obligation to pay the same, upon demand of the Managers, or upon demand of the Railroad Company, at any time, subsequent to the date set forth above for the payment thereof. Any Subscriber may anticipate the payment of the entire unpaid portion of his subscription, upon any date fixed for the payment of an installment thereof, *provided*, that in case of any such payment of an installment of such subscription in advance of the date hereinabove fixed for such payment, such subscriber shall pay, in addition to the interest then accrued upon the amount of bonds representing such prepaid installment, interest at the rate of 2% per annum upon said amount of bonds from the date of such prepayment to the date herein fixed for the payment of such installment.

(d) The Subscribers shall be called upon to make payment only ratably, according to the several amounts of their subscriptions, and each Subscriber shall be called upon to pay only such proportion of the entire obligation of the Syndicate (as such entire obligation shall be finally determined) as the amount of the bonds subscribed for by him at the foot hereof bears to the aggregate amount of the subscriptions hereto; but each Subscriber shall be responsible to the full extent of the obligation upon his subscription as so determined, without regard to the performance, or non-performance, or to the extent of performance, by any other Subscriber.

(e) Immediately after the closing of business on the day fixed for the payment by the Syndicate subscribers of the first installment of the purchase price of the bonds, the Managers shall, out of said installment, pay to the Railroad Company the amount which the Railroad Company has agreed to pay, and shall theretofore have paid, the Managers, individually, on account of organizing the Syndicate, and shall retain for the Syndicate (receipting to the Railroad Company therefor) any portion of the 3% commission of the Syndicate, which shall not have been paid to the Managers by said Roe Trust Company out of the first installment of the subscriptions of the stockholders. With the remainder of the moneys so received from the Subscribers (exclusive of amounts received on account of interest), the Managers shall, at the same time, make payment to the Railroad Company for the bonds, by paying the same to the Trustee, or the depositaries, under the Adjustment Mortgage, to be held as the proceeds of bonds issued

thereunder. All moneys received by the Managers on account of interest shall be paid by them to said Roe Trust Company.

(f) When, and as, any payments shall be made by the Syndicate, on account of the bonds bought by the Syndicate, as herein provided, the Managers, upon the making of each such payment, shall furnish to the Railroad Company a statement, specifying the Syndicate subscriptions on account whereof such payment shall be made and specifying the portion of such payment to be credited to the account of each Syndicate subscription covered thereby, and the Railroad Company shall, thereupon, in each such case, forthwith deliver to the Managers adjustment bonds (with all unmatured coupons attached) in principal amount equal to the amount of cash (exclusive of amounts paid on account of interest) paid by the Syndicate as aforesaid, including amounts, if any, retained by them on account of Syndicate commissions and amounts paid by them to the Railroad Company, on account of previous payments to the Managers by the Railroad Company of compensation for organizing the Syndicate, as authorized hereby. In every case, the Managers, for the Syndicate, shall have the right, at any time, to take and receive all of the then undelivered bonds purchased by the Syndicate, upon full payment therefor (including accrued interest), at the time of delivery, and, likewise, shall have the right, at any time, to take and receive all of the bonds apportionable to any Syndicate subscription and upon like payment; *provided* that, in every such case, the Managers shall pay to the Railroad Company, in addition to the principal amount of, and the interest accrued upon, the bonds thereupon delivered, interest upon such principal amount thereof as shall represent any installment of the purchase price thereof, that shall have been paid in advance of the time fixed hereby for the payment thereof, at the rate of 2% per annum from the date of such prepayment to the date herein fixed for the payment of such installment.

(g) Notwithstanding the failure of any Subscriber, his representatives, or assigns, to pay the whole, or any part, of any installment of the subscription of such Subscriber, when due, nevertheless, at any time before a sale made at the instance of the Railroad Company, as provided in paragraph Fifteenth of this agreement, the Managers, for such Subscriber (but not such Subscriber individually), shall be entitled (but shall be under no obligation) to pay the amount so remaining unpaid, with accrued interest at

the rate of 7% per annum to the date of such payment (together with any expense theretofore incurred, in connection with any proposed sale of any bonds, or the interest hereunder, of such Subscriber, on account of his default), and the same shall be accepted by the Railroad Company, and such payment shall be of the same force and effect as if the same had been made, at the time fixed herein for the payment of such installment.

(h) Pending the delivery to the Managers of any bonds purchased by the Syndicate, upon the purchase price whereof any payment shall have been made to the Railroad Company, the Railroad Company will, if requested so to do by the Managers, and upon the surrender of all other receipts, if any, theretofore issued on account of payments, issue to the Managers interim receipts evidencing the payment, or payments, theretofore made and the interest hereunder of the Managers, or their nominees, by reason of the same, and such receipts shall be in such face amounts, respectively, as may be requested by the Managers. Upon delivery of any bonds there shall be surrendered to the Railroad Company, duly endorsed, all certificates, or receipts, if any, theretofore issued by, or on behalf of, the Railroad Company, acknowledging payment on account of, or evidencing any interest in, the bonds thereupon to be delivered.

(i) Prior to the preparation ready for delivery of permanent bonds, which shall be engraved in accordance with the requirements of the New York Stock Exchange, temporary bonds may be delivered to said Roe Trust Company, or the Managers, upon due payment therefor, as above provided, in such denominations (being \$1,000, or multiples thereof), as said Roe Trust Company, or the Managers, as the case may be, shall request.

(j) On, or prior to, October 1, 1923, the Railroad Company shall pay to said Roe Trust Company such sum of money as shall be requisite, in addition to amounts already received and then held by said trust company on account of interest, to enable said trust company to pay all October 1, 1923, coupons, appertaining to adjustment bonds delivered by the Railroad Company prior to said October 1, 1923.

SIXTH. (a) The Managers may issue to the Subscribers suitable receipts, or certificates, for payments hereunder in such form as they may determine. Any further payments may be noted on such receipts, or certificates. Such receipts, or certificates, and

the rights of the respective Subscribers, may, if the Managers so determine, be made transferable, in such manner, and upon such terms and conditions, as the Managers may prescribe, but no transfer shall be valid, unless made upon such books as the Managers may keep for that purpose, and in such manner and form as they may prescribe. Except as otherwise provided in paragraph "Fourteenth" hereof, the transferor shall, in every case, continue liable for the unpaid part of any transferred subscription, until the same shall have been fully paid.

(b) The Managers, on behalf of the Syndicate, from time to time, but without power to involve the Subscribers in any personal money liability beyond the amounts payable on their subscriptions hereto respectively, may, in their discretion, and at such price, or prices, as they may fix, purchase, or sell, any of said \$10,000,000 in principal amount of the adjustment bonds, and may repurchase and resell any of such bonds, and may make any other transaction of any kind with any persons concerning any of such bonds, as they may deem expedient for any of the purposes of this agreement; *provided*, that the Managers shall not, at any time, hold for account of the Syndicate, including the bonds that shall have been purchased from the Railroad Company, an aggregate principal amount of said bonds exceeding the amount of bonds, which shall not have been subscribed for by stockholders and 20% thereof in addition thereto. The Managers may apply toward any such purchase the amounts realized from any sale of the bonds, and may apply any such amounts to the payment to the Railroad Company of any portion of the purchase price of the bonds, which the Syndicate has agreed to buy. Any such sales, or purchases, may be made by the Managers directly, or through others, at public, or private, sale, and at such prices as the Managers shall deem advisable, and any such sales, or purchases, and likewise any contract, or contracts, for, or with reference to, the making of sales, or purchases, or the price or prices, at which sales, or purchases, are to be made, may be made by, to, from, or with, the Managers individually, or any of them, or any corporation, or corporations, syndicate, or syndicates, in which, or in the formation, or management, of which, they, or any Subscriber, or Subscribers, may be interested, and by, to, from, or with, any Subscriber, or Subscribers, and the Managers may, at any time, subject to the provisions hereof with reference to the withdrawal of bonds from sale, sell, or otherwise

convert into cash, any, or all, of the assets of the Syndicate. In case of any such sale, the proceeds thereof shall become and be the subject of this agreement, and the Syndicate assets, as administered and finally distributed by the Managers under the provisions of this agreement, shall be accepted by the Syndicate in full and final discharge of any and all obligation of the Managers hereunder.

EIGHTH. (a) The Managers may, in their discretion, at any time during the existence of the Syndicate, retain the bonds, or any certificates, or receipts, representing bonds, purchased by the Syndicate and received by them, or they may deliver to any Subscriber his proportionate part thereof, upon his agreement to hold the same subject to sale, or other disposition, of the Managers, and to return the same, or any part thereof, upon the call of the Managers, at any time before, or upon, the termination of the Syndicate, or, if any such bonds shall have been withdrawn from sale as hereinbelow provided, to hold the same, subject to the agreement hereinafter contained not to sell, or contract to sell, the same, or to offer the same for sale. In case, at any time prior to the termination of the Syndicate, the Managers shall make sales of bonds, whether or not the same be bonds that shall have been purchased from the Railroad Company under this agreement, they shall be under no obligation to call for the re-delivery of any bonds delivered to Subscribers as above permitted, although the same shall not have been withdrawn from sale, or to re-adjust at all the holdings of bonds as between members of the Syndicate at any time prior to the termination of the Syndicate.

(b) The Managers, in their discretion, and upon such terms and conditions, if any, in addition to those herein expressly prescribed, as they may deem expedient, may, by written consent, permit any Subscriber to withdraw from the operation of this agreement any of the bonds then held by the Managers for the account of the Syndicate, or which the Syndicate shall be entitled to receive and apportionable to the subscription of such Subscriber. Such bonds shall, thereupon, be deemed to be withdrawn from sale, and, except as herein expressly provided, from the operation of this agreement, and, thereupon, or thereafter, as the same are received by the Managers, such bonds may be delivered to the Subscribers so withdrawing the same; but, in that case, the Managers may require any Subscriber making such withdrawal to pay to them, in advance,

any part of the purchase price of bonds so withdrawn then remaining unpaid, and may, also, require such Subscriber to pay to them an amount equal to one-fourth of 1% of the principal amount of the bonds so withdrawn; and, in such case, said payment of one-fourth of 1% shall be taken in full satisfaction, with respect to the bonds so withdrawn, of the obligation of the Subscriber so withdrawing to bear any part of the expenses incurred by the Managers under this agreement; and, to the extent of the amount, or portion, of his subscription represented by the bonds so withdrawn, the Subscriber so withdrawing bonds shall not be entitled to benefits, nor be subject to liabilities, as a member of the Syndicate.

(c) No Subscriber shall, at any time prior to the termination of the Syndicate, unless he shall have received the written consent thereto of the Managers, sell, or contract to sell, or offer for sale, any of the bonds that shall have been, at any time, subject hereto, whether or not he shall have withdrawn said bonds, or any bonds, from sale as herein provided.

NINTH. (a) The Subscribers nominate and appoint the Managers their agents and attorneys, with full power and authority, in the sole and absolute discretion of the Managers, to direct and manage the Syndicate, and to do any and all acts, and to enter into, execute and perform any and all agreements, or other instruments, necessary, proper, or by them deemed expedient, in the premises, to carry out this agreement, or to effect the purposes hereof. The enumeration of particular, or specific, powers in this agreement shall not be construed as, in any way, limiting, or abridging, the general powers, or discretion, which are intended to be conferred upon, or reserved to, the Managers, the same being so conferred, or reserved, in order to authorize them to do any and all things necessary, proper, or expedient, in their opinion, to carry out the purposes of this agreement.

(b) The Managers shall have the sole direction and management of the Syndicate. Subject to the rights of the Railroad Company hereby created, the Managers shall have full power, in their absolute discretion, to enforce any subscription hereto and any agreement for the underwriting, purchase, or sale, of any of said \$10,000,000 of adjustment bonds, and shall have full power, in their discretion, from time to time, by agreement with the Railroad Company, to modify this agreement, so far as the Syndicate shall be interested

herein, or hereunder, except that they shall not agree to increase the price to be paid for bonds hereunder; and they may, in their absolute discretion, with the consent of the Railroad Company, or, in case of default by the Railroad Company, without its consent, terminate this agreement, although it may be unperformed, or may be only partially performed.

(c) The Managers may, in their absolute discretion, by agreement with the Railroad Company, determine and vary and alter the form and provisions of said Seven Per Cent Adjustment Mortgage Gold Bonds, and of said Adjustment Mortgage, and of any temporary bonds, or interim certificates, or receipts, representing bonds, and any other instruments, or proceedings, preliminary to, or connected with, the issuance, or disposition, of said bonds, or the making of said Adjustment Mortgage, and they may, in like manner, determine and vary and alter the form or manner of, or dispense with, any other proceeding, or instrument, provided for, or contemplated, by this agreement, and the Managers shall have the same authority with reference to any modified bonds, mortgage, or other instrument, that they would have with reference to the instruments described, or referred to, herein.

(d) The Managers may advance moneys under this agreement, and may borrow moneys, in order to make payments under this agreement, pending calls upon Subscribers hereto, or pending sales of bonds purchased hereunder, or otherwise, or, in any other case, if, in their judgment, it may be necessary for the protection of the interests of the Syndicate (but, in every such case, without the power to create any personal money liability upon the part of any of the Subscribers, other than for the payment of their subscriptions hereto), and they may pledge any Syndicate assets, and, with the consent of the Railroad Company, any unpaid subscriptions hereto, as security for the repayment of any moneys so borrowed, and they may do any other thing, in their opinion beneficial to the Syndicate not specifically prohibited hereby, and this agreement shall, nevertheless, continue in force.

(e) Any and all contracts made by the Managers hereunder, or copies thereof, shall be open to inspection by any Subscriber, at the office of either of the Managers in the Borough of Manhattan, City of New York.

TENTH. The Managers are expressly authorized to hold any bonds that the Syndicate may acquire hereunder in negotiable

form, or to cause the same to be registered in their names, or the names of either of them, or in the name, or names, of any person, or persons, whom they may select, and, at any time, or from time to time, to cause any certificates, or receipts, representing any bond, or bonds, or any interest in bonds, belonging to the Syndicate to be issued in, or transferred into, the name, or names, of the Managers, or either of them, or of such person or persons as the Managers may direct, and, in every such case, as long as any such bonds, or any interest in bonds represented by any such certificate, or receipt, shall belong to the Syndicate, the person or persons in whose name, or names, such registered bonds, or such certificates, or receipts, shall stand, shall be deemed to hold the same for the Subscribers, in proportion to their respective interests therein hereunder, but subject always to the direction and control of the Managers, and to any charges thereon hereby established. Any of said bonds, certificates, or receipts, may be held by the Managers, or either of them, or may be deposited in any safe deposit box, or boxes, in any safe deposit vault that may be selected by the Managers.

ELEVENTH. The Managers shall not be liable, under any of the provisions of this agreement, or in, or for, any matters connected therewith, except for want of good faith upon their own part in performing, or refraining from performing, the obligations by them herein expressly assumed, and no obligation, not herein expressly assumed by them, shall be deemed to be implied. Neither of the Managers shall be liable on account of any act, or omission, of the other. Neither of the Managers, nor any representative of the Managers, shall be under any responsibility in respect of the form, or the proceedings for the authorization, or issuance, or for the validity, of said Seven Per Cent Adjustment Mortgage Gold Bonds, or said Adjustment Mortgage, or any thereof, or the form, or validity of any other agreement, instrument, or proceeding, contemplated hereby, or of any certificate, or receipt, that may be accepted by them in lieu of, or representing, any interest in any bonds purchased by the Syndicate, or for the performance, or non-performance, by the Railroad Company, or any other party thereto, of this agreement, or any other contract, including any undertaking contained in any certificate, or receipt.

TWELFTH. (a) The Managers shall be absolutely entitled, without accountability to the Subscribers, to all of the sums of money, rights and benefits received, or to be received, from the Railroad

Company by the Managers for their own individual use and benefit, and as well to any balance of any fund created by payment of one-fourth of 1% of the principal amount of bonds withdrawn from sale, pursuant to the provisions of paragraph Eighth hereof, that shall remain in the hands of the Managers, after payment of the expenses incurred by them, apportionable to the bonds so withdrawn, and the Managers shall not be under obligation to account, and shall not be liable, to the Syndicate, or to any Subscriber, for, or for the use, or disposition of, any sums of money, rights, or benefits, so received, or to be received by them, whether in consideration of their services in organizing the Syndicate, or in procuring the underwriting, or purchase, of bonds by it, or otherwise, it being expressly understood that the obligations of the Subscribers hereunder are not to be affected by, and that neither the Subscribers, nor any one taking under any of them, is to be entitled to any right, or thing, by reason of the receipt of any such sums of money, rights, or benefits, by the Managers.

(b) The Managers shall be entitled to reimbursement and indemnification from the Syndicate, and may reimburse and protect themselves for, and against, all disbursements, expenses and liability (having resort for reimbursement of expenses apportionable to bonds withdrawn from sale, in the first instance, and, until it shall be exhausted, to the fund, if any, created by withdrawals), and they shall have authority, in their sole and absolute discretion, finally to fix and pay, as a part of such expenses, the compensation of depositaries, bankers, brokers, agents, counsel and others. The Managers, however, shall have no right to make any charge to the Syndicate for their services in forming, or managing, the same, but they shall be entitled to charge in their expense account broker's commissions of the usual amount for any and every sale, or purchase, of bonds for the Syndicate account, except only purchases from the Railroad Company.

(c) The Managers, or any of them, may be Subscribers to the Syndicate, and, as such Subscribers, to the extent of their subscription, or subscriptions, shall have the same rights and obligations hereunder as other Subscribers.

THIRTEENTH. (a) Each Subscriber assents to, and agrees to be bound by, any action of the Managers taken under this agreement, and agrees to perform all of his undertakings hereunder, from time to time, as herein provided, to the full extent of the amount payable

upon his subscription hereto, without regard to the performance, or non-performance, or the extent of the performance, of his obligations by any other Subscriber; but, except as each Subscriber may be liable to the Railroad Company hereunder, every Subscriber shall be liable hereunder solely to the Managers, and their successors, and assigns, and only to the extent of his subscription.

(b) Every party hereto will, upon reasonable request, execute and deliver all further writings that may be necessary, or proper, to carry into effect the purposes of this agreement.

FOURTEENTH. (a) The failure of any Subscriber to perform any of his undertakings, in whole or in part, shall not release, or affect, the obligation of any other Subscriber.

(b) The Managers, in their discretion, with the consent of the Railroad Company, may, by written notice, release any Subscriber, and, in case any Subscriber shall fail to perform any of his undertakings hereunder, or in case, for any reason, the Manager and the Railroad Company shall deem it advisable to release any Subscriber, another Subscriber, or other Subscribers, may, with the approval of the Railroad Company, be received by the Managers, taking over the share of the Subscriber so in default, or so released, or being received as new, or independent, Subscriber, or Subscribers, to not exceeding the same aggregate amounts, as the Managers, with the consent of the Railroad Company, may determine; and this agreement shall, nevertheless, continue in full force as to all parties hereto not so released.

FIFTEENTH. (a) In case of the failure of any Subscriber, his representatives, or assigns, or of any transferee of, or under, any Subscriber, to pay any of the installments of the purchase price of the bonds to be taken by such Subscriber, as provided herein, or any part of such installment, the Railroad Company may, without any proceeding, either at law or in equity, and in such manner, and at such times, as it shall deem expedient, and as it shall, in its notice to be given as hereinbelow provided, state, sell the bonds with respect to which such default shall exist, either at public or private sale, but only upon notice in writing to be given to the Managers (for such Subscriber, or transferee), at least ten days prior to the date fixed for such sale, which notice shall specify the amount of bonds to be sold, the amount of the charge thereon to be realized, the time and place of such sale, and any conditions, or other terms, to be imposed upon, or in connection with, the sale, or

purchase, of said bonds so to be sold, and, upon any such sale of any such bonds, all interest and right therein of the Syndicate, or of any Subscriber, or transferee, thereof, shall cease and determine.

(b) In case of the failure of any Subscriber, his representatives, or assigns, or of any transferee of, or under, any Subscriber, to perform any of his undertakings hereunder, the Managers shall have the right, at their option (but, unless the Railroad Company shall consent thereto, in writing, without affecting any of the obligations of such Subscriber to the Railroad Company), to exclude such Subscriber and his transferee or transferees, or any of them, from all participation in the Syndicate, and may, in their discretion, without any proceedings, either at law or in equity, and with or without notice, and either at public or private sale, in such manner, and upon such terms, as they shall deem expedient, dispose of any and all of the interests, or rights, hereunder, or any, or all, of the bonds, if any, and any, or all, certificates, or receipts, representing bonds, or interests therein, if any, held by the Managers for, or apportionable to the subscription of, such Subscriber, or any part of the same.

(c) No defaulting Subscriber, or transferee, shall have any claim, or cause of action, against the Railroad Company, or the Managers, on account of such sale or any action taken by the Railroad Company, or the Managers, as herein authorized.

(d) At any such sale under agreement of any of the interests, or rights, or of any of the bonds, or any interest in bonds held for, or apportionable to the subscription of, any Subscriber, the Managers, or any of them, at any public sale, or any Subscriber, or Subscribers, transferee, or transferees, at any sale, public or private, may purchase the same for his, or their, own benefit, without any accountability to anyone with reference thereto, or with reference to the subject of such purchase. The proceeds derived from any such sale shall be applied, as follows, viz.: (1) to the payment of the costs and expenses thereof; (2) to the discharge of all obligations to the Railroad Company of such defaulting Subscriber, or transferee; and (3) to the payment of such Subscriber's, or transferee's, proportion, if any, of the Syndicate expenses, liabilities and losses; the surplus, if any, to be accounted for, upon the termination of the Syndicate, to whomsoever may be entitled thereto; but, notwithstanding any sale, at any time, public or private,

the defaulting Subscriber and every transferee of, or under, such Subscriber, to the extent of the interest transferred to such transferee, or transferees, respectively, shall remain responsible to the Managers, for the benefit of the Syndicate, and to the Railroad Company for all damages resulting from any such default, not exceeding the amount unpaid upon the subscription of such Subscriber, or on account of the interest therein of any such transferee, as the case may be, with legal interest and costs and expenses. The foregoing provisions of this article Fifteenth are without prejudice to any of the rights, or remedies, which the Railroad Company may be entitled to exercise, in any such case, under, or by virtue of, any of the provisions of this agreement.

SIXTEENTH. The Managers shall be under no liability, in case any member, or members, of the Syndicate shall default, or, in any way, fail in the performance of his, or their, obligations hereunder, either for the performance of the obligations of such defaulting member, or members, or in any manner on account of, or by reason of, such default, or defaults, or of any other matter, save only for their own bad faith, or gross negligence; and no member of the Syndicate shall be under any liability by reason of the default of any other member thereof.

SEVENTEENTH. Any bond, permanent, or temporary, mortgage, interim, or other, receipt, or other instrument, or proceeding, of the general character contemplated by this agreement, which shall be approved of in writing by the Railroad Company and by the Managers, shall be deemed to be the bond, mortgage, receipt, or other instrument, or proceeding, as the case may be, referred to, or contemplated, by this agreement, and any variations in the terms of this agreement contained in, or affected by, any such bond, mortgage, receipt, or other instrument, or proceeding, so approved of, shall be deemed to be binding upon all of the parties hereto, and the execution and delivery of any such bond, or mortgage, shall be a discharge of the obligation of the Railroad Company hereunder in respect of such bond or mortgage.

EIGHTEENTH. So far as, in their opinion practicable, the firms of Doe & Co. and William Roe & Co. shall act jointly and shall concur in all steps and proceedings hereunder, but either of such firms composing the Managers may, by instrument, or instruments, in writing, delegate any, or all, authority that it may have hereunder to the other of said firms, and the action of either of said

firms, when so authorized to act for the other, shall be deemed the action of both. Each of said firms shall act as a co-partnership, and all rights and powers hereunder of either of said firms shall vest in each person, or co-partnership, that shall be the sole successor of such firm, or shall lawfully bear its name, without further act or assignment. Payment, or tender of money, and delivery, or tender, of bonds, certificates, or receipts, representing bonds, by, or to, Doe & Co., at No. 271½ Broadway, Borough of Manhattan, New York City, shall be deemed, for all the purposes of this agreement, payment, delivery, or tender, by, or to, the Managers, or by, or to, the Syndicate.

NINETEENTH. (a) Books shall be kept by the Managers in which shall be recorded the addresses of such Subscribers and of such personal representatives and transferees of Subscribers as shall furnish the same.

(b) Any notice, or demand, given, or made, by the Managers to, or upon, the Subscribers, or personal representatives, or transferees, of Subscribers, or any of them, shall be deemed to have been duly given, or made, when mailed in writing to the Subscribers, or personal representatives, or transferees directed to the addresses so furnished; but notice to, or demand upon, any Subscriber shall be deemed, in every case, notice to, or demand upon, every transferee of, or claiming under, such Subscriber, whether the address of any such transferee shall have been furnished to the Managers, or not; and the giving of any notice to, or the making of any demand upon, any transferee shall not be deemed to entitle such transferee to any further notice in the same, or any other, matter.

(c) The Managers shall be under no obligation to give any notice of calls, or any other notice, to any Subscriber, or to his personal representatives, or to any transferee, who shall not have furnished an address, but any notice mailed to any such Subscriber in, and addressed to him, at New York City (without more), shall have the same force and effect as if given to him personally, and every Subscriber and the personal representatives of every Subscriber and every transferee of any Subscriber, who shall have failed so to furnish his or their address, shall be deemed to assent to any action of the Managers hereunder.

TWENTIETH. Each subscription hereto is expressed in the amount, face value, of the Seven Per Cent Serial Adjustment Mortgage Gold Bonds subscribed for, but the purchase price of the

bonds actually required to be taken by the Syndicate that shall be apportionable to such subscription shall be deemed to be the maximum amount of the Subscriber's liability thereupon.

TWENTY-FIRST. Nothing contained in this agreement, or otherwise, shall constitute the Managers partners with the Subscribers, or shall constitute the Subscribers partners, or joint debtors, with the Managers, or with one another, nor shall the Managers, or any Subscriber, be liable upon the subscription of any other Subscriber.

TWENTY-SECOND. (a) This agreement shall continue in force and operation, in all its parts, from the date hereof, until and including December 31, 1923, but the Managers may, at any time, in their absolute discretion, prior to said date, dissolve the Syndicate, upon giving written notice of such action to the Subscribers.

(b) Upon the termination of the Syndicate, and after the payment of all of the expenses of the Syndicate, and the complete performance of all its agreements, and not before, each Subscriber shall be entitled to receive his ratable proportion of the bonds and cash then held by the Managers hereunder. The then net profits of the Syndicate, including the Syndicate compensation to be paid as aforesaid, shall be divided among the Subscribers in the proportion that their several subscriptions hereto shall bear to the aggregate Syndicate subscriptions, proper allowance being made, as herein provided, for any bonds withdrawn from sale, and the losses of the Syndicate shall be borne by the Subscribers in like proportion. Any portion of the profits, including the Syndicate compensation, may be distributed before the termination of the Syndicate.

TWENTY-THIRD. Three originals hereof shall be signed by the Managers and the Railroad Company, and each of the Managers and the Railroad Company shall retain one original. Counterparts may be signed by the Subscribers, and the signing of such counterparts shall be deemed to have the same effect as if the Managers and the Railroad Company and all of the Subscribers had executed one original instrument.

TWENTY-FOURTH. (a) None of the provisions of this agreement shall be binding upon any of the parties hereto in case either (1) the Managers shall not receive from the Railroad Company the letter required by the proviso in paragraph Fifth hereof, or (2) the Managers shall not be satisfied with such letter, or (3) a list of subscribers to the Syndicate and of the amount of their respective

subscriptions shall not be approved of in writing by the Chairman of the Board of Directors of the Railroad Company, or (4) this agreement shall not be approved of by a majority of the stockholders of the Railroad Company, as provided in paragraph Fifth hereof.

(b) The Railroad Company agrees that a meeting of its stockholders shall be held on, or about, the 27th day of April, 1923, for the purpose of authorizing the adjustment bonds and the making of the Adjustment Mortgage. In case within two weeks after said date the stockholders shall not authorize the adjustment bonds and the making of the Adjustment Mortgage as herein provided, or in case the Railroad Company shall not execute the Adjustment Mortgage and be ready and willing to deliver the adjustment bonds, as, and at the times, required hereby, the Syndicate may, at the option of the Managers, terminate this agreement.

(c) This agreement shall bind and benefit ratably not only the parties hereto, but, also, their respective survivors, successors, personal representatives and assigns, and, unless inconsistent with the context, or a contrary intention appear, the words "Subscriber" and "Subscribers" shall be deemed to comprehend not only the Syndicate Subscriber, or Subscribers personally, but their personal representatives and all transferees claiming under them, respectively; but no assignment of rights hereunder shall operate to discharge any Subscriber from any obligation that he may have incurred hereby or hereunder.

IN WITNESS WHEREOF, the Rio Grande Railroad Company has caused its corporate seal to be hereunto affixed and attested, and this agreement to be signed by the Chairman of its Board of Directors, and by its Secretary, or an Assistant Secretary, and the other parties hereto have hereunto affixed their signatures, all as of the day and year first hereinabove written.

Rio Grande Railroad Company,

By John Smith,

Chairman of the Board of Directors, and

John Jones,

Secretary.

(Seal)

Attest:

John Jones,

Secretary.

Doe & Co.,
 By John Doe.
 Richard Roe & Co.,
 By William Roe

<i>Names</i>	<i>Addresses</i>	<i>Subscriptions in Face Amount of Bonds</i>
William Blackacre,	No. 37½ Broadway, Borough of Manhat tan, New York City,	\$10,000

No. 313.

**Agreement extending time for payment of mortgage, where-
 under mortgagor agrees to reduce principal.⁷**

THIS AGREEMENT, made January 5, 1923, between Doe Life Insurance Co., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, Koe, Inc., heretofore executed and delivered to the Smith Title Insurance Company of New York a certain bond, bearing date the 23rd day of February, 1922, to secure the payment of thirty-six thousand (\$36,000) dollars on the 23rd day of February, 1923, with interest thereon at five (5%) per cent per annum, as therein specified, and, as security for the payment of the said bond, the said Koe, Inc., made, executed and delivered to the said Smith Title Insurance Company a mortgage bearing even date with said bond, covering the premises, known as No. 57½ Broadway, Borough of Manhattan, New York City, therein particularly described, which said mortgage was recorded in the office of the register of the city and county of New York on the 23rd day of February, 1922, at three o'clock and 56 minutes P.M., in Block Series (Mortgages), Section A10, Liber 153a, page 304, and indexed under Block No. 2617 on the Land Map of the City of New York, as by said mortgage and the certificate thereon, as to the

⁷ Adapted from *Clare v. N. Y. Life Insurance Co.* (1917), 178 App. Div. 877, 166 N. Y. Supp. 95.

record thereof, will, on reference thereto, among other things, more fully appear; and

WHEREAS, said mortgage was assigned by the Smith Title Insurance Company to the First Party, by an assignment dated February 23, 1922; and

WHEREAS, the First Party now is the owner and holder of the said mortgage and of the bond which said mortgage secured; and

WHEREAS, the Second Party is the owner, in fee simple, of the premises covered by said mortgage, and has requested the First Party to extend the time for the payment of thirty-six thousand (\$36,000) dollars of the principal of said bond and mortgage, and the First Party has agreed to extend the time for the payment of thirty-six thousand (\$36,000) dollars of said principal in the manner hereinafter set forth:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. The First Party does hereby agree to extend the time for the payment of thirty-six thousand (\$36,000) dollars of the principal of said bond and mortgage from February 23, 1923, to the 23rd day of February, 1925, with reductions as hereinafter stated, and to accept interest, at the rate of five (5%) per cent per annum, payable on the first day of August next, and semi-annually thereafter on the first day of February and August in each year, from the first day of February, 1923, until said principal sum is fully paid and satisfied, subject, however, to the covenants, conditions and agreements hereinafter contained.

2. The Second Party hereby covenants, promises and agrees to and with the said First Party, as follows:

(a) That the said bond and mortgage hereinbefore mentioned are in full force and effect;

(b) That the said bond and mortgage, except as herein modified, shall be taken and held to be in full force and effect, as though the Second Party had been originally the party executing the same;

(c) That the Second Party will, well and truly, pay, or cause to be paid, the principal and interest of said bond and mortgage, as hereinbefore and herein extended and modified;

(d) That the Second Party will fully and faithfully comply with all the terms and conditions of said bond and mortgage, and keep and perform the same and the covenants and agreements therein contained; and, in default thereof, or in case of the failure

of the Second Party to keep and perform any and all of the conditions and agreements herein contained, then, and in either event, the extension of time for payment herein granted shall immediately terminate, and said bond and mortgage shall be taken and held to be immediately due and payable, with all the rights and privileges accruing to the First Party by virtue thereof, anything herein contained to the contrary thereof in any wise notwithstanding.

3. This extension is made upon the express condition that the principal of the mortgage above set forth, thirty-six thousand (\$36,000) dollars, shall be reduced by payment of five hundred (\$500) dollars on March 1, 1923, and three hundred (\$300) dollars on each and every February and August 1st of the extended term; and, upon default of or in payment of any of said installments, with interest thereon, or interest upon said principal sum, the whole of said principal debt and interest then unpaid shall immediately become due and payable.

4. The right of recourse to recover the amount of said mortgage and interest against prior bondsman, or bondsmen, is hereby explicitly reserved.

5. It is understood and agreed that the covenants, agreements and stipulations aforesaid are to apply to, and bind, the successors, heirs, executors and administrators and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the First Party has signed this instrument, by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

Doe Life Insurance Co.,
By John Doe,
President.

(Seal)
Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

No. 314.

Agreement of participation in a mortgage.⁸

AGREEMENT, made between Doe Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, as executor of the last will and testament of Henry Koe, deceased (herein called the "Second Party"), WITNESSETH:

WHEREAS, the Doe Title Insurance Company of New York is about to make, execute and deliver to the First Party an assignment of a certain bond, dated February 23, 1922, to secure thirty-six thousand (\$36,000) dollars and interest, together with the mortgage given as collateral thereto, made by Koe Co., Inc., to the Doe Title Insurance Company of New York, and recorded in the office of the register of the county of Bronx on February 23, 1922, in Liber A454, Section 6, of Mortgages, page 317a, covering premises situated in the Borough of Bronx, City and State of New York, with the buildings and improvements thereon erected, bounded and described as follows:

BEGINNING * * *

and

WHEREAS, the Second Party is to have an interest in the said bond and mortgage, to the extent of six thousand (\$6,000) dollars and interest thereon, at the rate of five (5%) per cent per annum from February 23, 1922, and the First Party is to become the owner of the balance of the said mortgaged debt, namely, thirty thousand (\$30,000) dollars, with interest thereon at the rate of five (5%) per cent per annum from February 23, 1922, but the ownership of the First Party is to be superior to that of the Second Party:

Now, THEREFORE, the parties hereto mutually certify, covenant and agree, as follows:

1. That the ownership of the said First Party in said bond and mortgage is to the extent of thirty thousand (\$30,000) dollars, with interest thereon at the rate of five (5%) per cent per annum

⁸ Adapted from *Clare v. N. Y. Life Insurance Co.* (1917), 178 App. Div. 877, 166 N. Y. Supp. 95.

from February 23, 1922, and the Second Party is the owner of the balance of said mortgaged debt, but that the ownership of the First Party shall be superior to that of the Second Party, as if the First Party held a first mortgage for thirty thousand dollars and interest thereon as aforesaid, and the Second Party held a second and subordinate mortgage, to secure the balance of said mortgaged debt.

2. That the Second Party hereby authorizes the First Party to assign, transfer and set over to any individual, or corporation, its interest in said bond and mortgage for any amount not exceeding thirty thousand (\$30,000) dollars, at any time it desires so to do, and the First Party, or its assigns, is hereby authorized to collect the entire interest due on said bond and mortgage, at the rate of five (5%) per cent per annum, and to retain therefrom the interest due on the said thirty thousand (\$30,000) dollars, at the rate of five (5%) per cent per annum, remitting the balance thereof on the sum of six thousand (\$6,000) dollars, to the Second Party, and the First Party, or its assigns, is further authorized to accept payment of said mortgage and to execute a proper satisfaction thereof, but agrees to account to the Second Party for all moneys received by it in excess of thirty thousand (\$30,000) dollars, with interest as aforesaid.

3. That the First Party shall have all the rights of any holder of said bond and mortgage, and, in the event of any default in said bond and mortgage, the right to foreclose the same and receive the proceeds of any sale from the referee; but the Second Party shall, in any and every event, have the right to an accounting for all moneys received by the First Party in excess of the ownership of the First Party in said bond and mortgage.

4. That all rights and authority given to the First Party, under this agreement, by the Second Party, shall be irrevocable.

5. That the First Party shall notify the Second Party, or its assigns, of any and every default on said bond and mortgage, and of any and every foreclosure, by making the Second Party, or its assigns, a defendant in any and every suit, without further notice or demand, but the First Party shall be under no other obligation to protect the interest of the Second Party under any such suit, or upon any sale under any such foreclosure.

6. That the Second Party hereby expressly agrees not to assign, sell, or transfer the subordinate interest in said bond and mortgage

held under this agreement, or to accept payment of the same, or any part thereof, without the written consent of the First Party.

IN WITNESS WHEREOF, the First Party has signed this instrument, by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the 5th day of January, 1923.

Doe Co., Inc.,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

No. 315.

Agreement subordinating existing mortgage to new mortgage—official form.⁹

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), and Henry Koe, residing at No. 15½ Broadway, Borough of Manhattan, New York City (herein called the "Third Party"), WITNESSETH:

WHEREAS, the First Party is the owner in fee of premises situate in the Borough of Manhattan, New York City, commonly known as No. 37½ Broadway; and

WHEREAS, the Second Party is the owner and holder of a certain mortgage covering said premises, or a part thereof, as by reference to said mortgage will appear, and of the bond which said mortgage secures, said mortgage bearing date the 5th day of January, 1922, being made by the First Party to the Second Party, to secure the payment of the sum of ten thousand (\$10,000) dollars, and interest, and recorded in the office of the register of New York County on the 5th day of January, 1922, in Liber 361A, of Section 7 of Mortgages, page 374; and

⁹ Adapted from the form prepared and used by the Lawyers Title and Trust Company, New York City.

WHEREAS, on condition that said mortgage be subordinated in the manner hereinafter appearing, the Third Party is about to receive and accept from the First Party a mortgage covering said premises hereinabove described, bearing date the 5th day of January, 1923, made by the First Party to the Third Party to secure the payment of the sum of fifteen thousand (\$15,000) dollars, and interest:

NOW, THEREFORE, in consideration of the premises and to induce the said Third Party to accept the said mortgage from the First Party, and also in consideration of one (\$1) dollar to each of them paid by the Third Party, the receipt whereof is hereby acknowledged, the said First and Second Parties do hereby, severally and respectively, covenant, consent and agree, to and with the said Third Party, that said mortgage owned and held by the Second Party shall be, and the same hereby is, made subject and subordinate in lien to the lien of said mortgage for fifteen thousand (\$15,000) dollars, and interest, to be received and accepted by the Third Party.

This agreement shall be binding upon and enure to the benefit of the respective heirs, legal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the First and Second Parties have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of
John Jones.

No. 316.

Bond to be secured by real estate mortgage—official form.¹⁰

KNOW ALL MEN BY THESE PRESENTS, that John Doe & Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City, hereinafter designated as the obligor, does hereby acknowledge itself to be justly indebted to Richard Roe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, hereinafter designated as the obligee, in the

¹⁰ Adapted from the form prepared and used by the Lawyers Title and Trust Company, New York City.

sum of fifteen thousand (\$15,000) dollars, lawful money of the United States, which sum the said obligor does hereby covenant to pay the said obligee, his executors, administrators, successors, or assigns, on the 5th day of January, nineteen hundred and twenty-eight, with interest thereon to be computed from the 5th day of January, 1923, at the rate of six (6%) per centum per annum, and to be paid on the 5th day of July next ensuing the date hereof and semi-annually thereafter.

IT IS HEREBY EXPRESSLY AGREED, that the said principal sum shall become due at the option of the said obligee, or the executors, administrators, successors or assigns of the obligee, after default in the payment of interest for thirty days, or after default in the payment of any taxes, assessments or water rates for sixty days after notice and demand, or after default in the payment of any installment of principal, or after any other default, or upon the happening of any event by which, in any case, under the terms of the mortgage securing this bond, the said principal sum may or shall become due and payable; also that all of the covenants and agreements made by the said obligor in said mortgage are hereby made part of this instrument.

Signed and sealed this 5th day of January, 1923.

John Doe & Co., Inc.,
By John Doe,
President.

In the presence of

John Jones.

(Seal)

Attest:

Roger Smith,
Secretary.

No. 317.

Owner's estoppel certificate—official form.¹¹

I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, owning premises situate in the Borough of Manhattan, of the City of New York, covered by a mortgage for fifteen thousand (\$15,000) dollars, dated the 5th day of January,

¹¹ Adapted from the form prepared and used by the Lawyers Title and Trust Company, New York City.

1922, and recorded on the 5th day of January, 1922, in the office of the register of the county of New York, in Liber 210A of Mortgages, page 310, section 6, which mortgage is about to be assigned to Richard Roe, residing at No. 371½ Broadway, Borough of Manhattan, New York City,

DO HEREBY CERTIFY, in consideration of the sum of one dollar paid, the receipt whereof is hereby acknowledged, and to enable said assignment to be made by Henry Koe to the said Richard Roe, that said mortgage is a valid first lien on said premises for the full amount of principal and interest now owing thereon, namely, fifteen thousand (\$15,000) dollars and interest thereon at six (6%) per centum per annum from the 5th day of January, one thousand nine hundred and twenty-three, and that there are no defenses to said mortgage or to the bond secured thereby, and that all the other provisions of said bond and mortgage are in force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the 5th day of January, one thousand nine hundred and twenty-three.

John Doe (L.S.).

In the presence of
John Jones.

No. 318.

Release of part of mortgaged premises—statutory form.¹²

THIS INDENTURE, made the 5th day of January, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, party of the first part, and Richard Roe, residing at No. 371½ Broadway, Borough of Manhattan, New York City, party of the second part.

WHEREAS, the party of the second part, by indenture of mortgage, bearing date the 5th day of January, 1922, recorded in the office of the register of the county of New York, in Liber 361A of Mortgages, of section 7, page 55, on the 5th day of January, 1922, for the consideration therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements of which the lands hereinafter described are a part, unto the party of the first part.

¹² Adapted from *New York Laws* (1917), Ch. 681, Schedule P.

AND WHEREAS, the party of the first part, at the request of the party of the second part, has agreed to give up and surrender, the lands hereinafter described unto the party of the second part, and to hold and retain, the residue of the mortgaged lands as security for the money remaining due on said mortgage.

NOW THIS INDENTURE WITNESSETH, that the party of the first part, in pursuance of said agreement, and in consideration of five thousand (\$5,000) dollars, lawful money of the United States, to him paid by the party of the second part, does grant, release, and quitclaim unto the party of the second part, all that part of said mortgaged lands described as follows:

BEGINNING * * *

Together with the hereditaments and appurtenances thereunto belonging, and all the right, title and interest of the party of the first part, of, in and to the same, to the intent that the lands hereby conveyed may be discharged from said mortgage, and that the rest of the land in said mortgage specified may remain to the party of the first part as heretofore.

To have the lands and premises hereby released and conveyed to the party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof forever, free, clear and discharged of and from all lien and claim under and by virtue of the indenture of mortgage aforesaid.

IN WITNESS WHEREOF, the party of the first part has signed and sealed these presents, the day and year first above written.

John Doe (L.S.).

In the presence of

John Jones.

No. 319.

Satisfaction of mortgage—statutory form.¹³

KNOW ALL MEN BY THESE PRESENTS, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, hereby certify that a certain indenture of mortgage, bearing date the 5th day of January, 1920, made and executed by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, to secure the payment of the principal sum of five thousand (\$5,000) dollars, and interest, and duly recorded in the office of

¹³ Adapted from *New York Laws* (1917), Ch. 681, Schedule Q.

the register of the county of New York, in Liber 274B of Mortgages, of section 6, page 39, on the 5th day of January, 1920, is paid, and do hereby consent that the same be discharged of record.

Dated, the 5th day of January, 1923.

John Doe (L.S.).

In the presence of

Henry Koe.

No. 320.

Certificate of mortgagee of amount due and unpaid on chattel mortgage.¹⁴

I, Richard Roe, the mortgagee within named, do hereby certify and state that there remains due and unpaid on the mortgage, of which the foregoing is a true copy, the sum of five hundred (\$500) dollars, with interest thereon from January 5, 1922, and this copy and statement are filed to continue the notice required by the statute made and provided for the renewal of chattel mortgages.

Dated, this 5th day of January, 1923.

Richard Roe.

No. 321.

Clause accelerating maturity of principal, upon altering building, without consent of mortgagee.¹⁵

No alteration shall be made to the present building on the premises covered by this mortgage, without the consent of the holder of this mortgage; and, should any alterations be made without first obtaining such consent, then, at the option of the mortgagee, the whole amount of the principal sum shall immediately become due and payable.

No. 322.

Clause accelerating maturity of principal of subordinate mortgage, upon default in interest or foreclosure of prior mortgage.¹⁶

This mortgage is subject and subordinate to a mortgage given to secure the payment of one hundred and thirty thousand (\$130,

¹⁴ Cf. *McCrea v. Hopper* (1898), 35 App. Div. 572, 55 N. Y. Supp. 136.

¹⁵ Adapted from *Loughrey v. Catalano* (1921), 117 Misc. 393, 191 N. Y. Supp. 436.

¹⁶ Adapted from *Trowbridge v. Malex Realty Corporation* (1921), 198 App. Div. 656, 191 N. Y. Supp. 97.

000) dollars (originally one hundred and forty thousand [\$140,000] dollars), and interest, recorded in the office of the register of the county of New York in Liber 7A of section 8 of Mortgages, page 456, now a prior lien on said premises; and it is hereby expressly agreed that, should any default be made in the payment of the interest on said prior mortgage, and should such interest remain unpaid and in arrears for the space of ten (10) days, or should any suit be commenced to foreclose said mortgage, then the amount secured by this mortgage and the accompanying bond shall become and be due and payable, at any time thereafter, at the option of the owner, or holder, of this mortgage.

No. 323.

Covenant providing mortgagees shall hold as joint tenants.¹⁷

It is understood and agreed that the second parties shall receive, accept and hold this mortgage as joint tenants, and that, upon the death of one, the survivor of them shall absolutely own the same.

No. 324.

Covenant giving mortgagee option, upon request of mortgagor, to satisfy mortgage and make a larger loan to be secured by new mortgage, or mortgages.¹⁸

Upon the request of the mortgagor, or any other owner of the premises described herein, the holder of this mortgage, at its option, may satisfy and discharge this mortgage of record and loan said mortgagor, or such owner, a larger sum than the sum secured to be paid by this mortgage, which said additional sum, together with the amount secured by this mortgage, shall constitute a loan and a lien on said premises, to be secured by one or more mortgages to be then executed and in form similar to this mortgage, and recorded, and to run for a length of time and at such rate of interest as the mortgagee may determine and to the extent of the amount of this mortgage shall be in lieu of the mortgage satisfied and discharged.

¹⁷ Adapted from *In re Wintjen's Estate* (1917), 99 Misc. 471, 165 N. Y. Supp. 927.

¹⁸ Adapted from *People ex. rel. U. S. Title Guaranty Co. v. State Tax Commission* (1920), 230 N. Y. 120, 129 N. E. 222.

No. 325.

Reservation by mortagor to cut standing timber.¹⁹

The mortgagor may cut any and all standing timber upon the premises.

¹⁹ Adapted from *Fox v. Domino Lumber Co.* (1921), 116 Misc. 567, 190 N. Y. Supp. 305.

CHAPTER XVI

OPTIONOR AND OPTIONEE

- No. 326—Agreement of corporation granting option to purchase its factory, merchandise, trade-marks, etc.
- No. 327—Agreement of corporation granting option to purchase its treasury stock, with a right of cancellation, if the brokers fail to sell stipulated amounts at stated intervals.
- No. 328—Agreement of corporation to purchase from promoters businesses and properties of various partnerships and corporations, which promoters propose to acquire.
- No. 329—Agreement of corporation to purchase from syndicate manager bonds and stocks of various corporations, which syndicate proposes to acquire.
- No. 330—Agreement of employer granting to employee prior option to purchase his business, upon his election to sell, or at his death, if employee then is in his employ.
- No. 331—Agreement of principal stockholder of corporation and one of its stock-owning employees, whereunder former guaranties a minimum return to the employee upon his stock, and former, also, is given an option to purchase the stock of employee, if employee ceases to work for the corporation, and employee is granted an option to sell his shares of stock to former, at any time, with a covenant by employee not otherwise to alienate his shares of stock.

No. 326.

Agreement of corporation granting option to purchase its factory, merchandise, trade-marks, etc.¹

AGREEMENT, made January 5, 1923, between Doe Glucose Company, a corporation, duly organized under the laws of the State of

¹ Adapted from *Corn Products Refining Co. v. U. S.* (1919), 249 U. S. 621, 39 Sup. Ct. Rep. 291, 63 Law ed. 805.

New Jersey, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Optionor"), and Richard Roe, residing at No. 37½ Main Street, City of LaSalle, State of Illinois (herein called the "Optionee"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That, in consideration of ten (\$10) dollars, and other good and valuable considerations, to it in hand paid by the Optionee, the receipt whereof is hereby acknowledged, the Optionor hereby agrees, upon the request of the Optionee, or his transferee, provided such request shall be made to the Optionor, on or before June 5, 1923, to sell, transfer, convey, assign, and deliver to the Optionee, or his transferee, all of its right, title and interest of, in and to the following property, *viz.*:

All and singular the real estate, leasehold, buildings, improvements, apparatus, easements, plant, machinery, fixtures and utensils in use (as distinguished from surplus supplies in stock), now belonging to the Optionor, and situated in the City of Peoria, State of Illinois, together with all and singular the good-will of its factory, in the City of Peoria, State of Illinois, and all and singular the trade-rights, trade-marks, trade-names, and the right to use in that, or in any other, plant, any patents owned, or controlled, by the Optionor, now in use in its said plant, as well as the exclusive right to use any other of the patents owned by it, so far as the manufacture of glucose and grape sugar is concerned.

2. The Optionor agrees that all of such property, at the time of the exercise of the option hereby given, shall be, and shall be conveyed and transferred, free and clear from all liens, charges, encumbrances, and assessments of every nature; and the Optionor shall, within fifteen (15) days after demand therefor, furnish to the Optionee, for examination by his counsel, full and complete abstracts of title to its said real estate and leasehold in the City of Peoria, State of Illinois.

3. The Optionee is hereby given the exclusive right and option to purchase from the Optionor all of the property hereinbefore mentioned, at any time prior to June 5, 1923 (time being of the essence of this agreement), for the price of one million (\$1,000,000) dollars, which shall be paid to the Optionor in cash, upon the delivery of its deed of the aforesaid real property, and of a bill of sale of so much of the property hereinbefore mentioned, which may be deemed to be personal property.

4. (a) Nothing herein shall limit the right of the Optionor, prior to the time of the actual transfer of such property, to operate, or add, to its plant and machinery, or any part thereof, as freely and fully as if this agreement had not been made. But, in addition to the price specified in the preceding article of this agreement, there shall, also, be paid to the Optionor, the aggregate of all sums expended by the Optionor subsequent to the date hereof for buildings, machinery, boilers, and other fixtures, which are properly and fairly chargeable to the Construction and Betterment Account, under the system, and according to the past practices, of the Optionor. But nothing herein contained shall authorize the Optionor to demand compensation for any money expended subsequent to the date hereof, as distinguished from moneys expended by it and properly and fairly chargeable by it to the Construction and Betterment Account of the Optionor.

(b) The books and vouchers of the Optionor shall be conclusive as to the amount of such expenditures for which the Optionor shall be entitled to demand compensation, under the provisions hereof.

(c) All materials and supplies, which shall be charged upon the books of the Optionor to the Construction and Betterment Account, but which shall not actually have been put in place, at the time that the transfer hereunder shall be made, shall pass with the property, without extra, or further, compensation therefor.

(d) Any contract for alteration, or extension, of plant, or machinery, and repairs to the same, which shall remain unperformed at the time of the exercise of the option hereby granted, shall be assumed by the Optionee.

(e) The Optionor hereby represents that its existing contracts for supplies are now in the City of Peoria, State of Illinois, and are not accessible, and the exact terms thereof cannot, at the time of the execution hereof, be ascertained. The Optionor represents that it has entered into certain contracts for sulphur, boneblack, and other minor supplies, which contracts will continue for a period of time; and the Optionor covenants that these contracts were made, prior to the date hereof, and that all of such contracts were made judiciously and in good faith, for the purpose of conducting its business, in the City of Peoria, State of Illinois, with all possible economy. Any such contracts, which shall remain unperformed, at the time of the taking over of the property, shall be assumed by the Optionee, or his transferee, if either shall so elect,

without charge therefor, but without recourse as against the Optionor, so that the Optionee, or his transferee, may have the benefit thereof, if the Optionee, or his transferee, shall so elect, and not otherwise.

5. If, prior to the transfer of the property, any part of it shall be destroyed, or injured, by fire, or other casualty, then the purchase price hereinbefore specified shall be abated to the extent, or amount, of such loss, unless reconstruction, or replacement, shall have been effected by the Optionor. If the parties hereto shall be unable to agree upon the amount of such abatement, the same shall be ascertained and determined by appraisal, in the manner hereinafter provided.

6. (a) At the time of the consummation of the aforesaid purchase of the property (if the same shall be consummated), the Optionor agrees to sell and deliver, and the Optionee agrees to purchase from the Optionor, all of its supplies and materials then on hand, or in transit, and which shall have been purchased, or ordered for use, in connection with its plant, and all and singular its products and merchandise, manufactured, unmanufactured, or in process of manufacture, and, also, all and singular the unexpired insurance upon its plant and manufactured stock then on hand. The price to be paid for such supplies and materials shall be the market value thereof, on the date when the transfer shall be made. The price to be paid for the unexpired insurance shall be such a proportion of the premium as the unexpired term bears to the full term.

(b) If the parties cannot agree upon the market value of any of the property mentioned in this article, then the same shall be ascertained by appraisal, in the manner hereinafter provided.

(c) The aggregate of such price shall be payable in cash, upon delivery of the possession of the property.

(d) The Optionee shall assume all bona fide contracts for the sale and delivery of merchandise made by the Optionor in the regular course of its business, which shall remain open upon the transfer of the property, and the Optionee shall fill all of the then accepted orders of the Optionor, provided, however, that the aggregate of all of such orders and contracts shall not exceed the product of one hundred thousand (100,000) bushels of corn, and that each such contract and order can, by its terms, be fully executed within forty-five (45) days after the transfer of the property.

7. (a) In the event of the exercise of the option hereby given, then, contemporaneously therewith, the Optionor shall cause to be properly executed by itself, and by John Doe and Henry Doe, two of its officers and directors, a contract, or contracts, with the Optionee, by which the Optionor and the said John Doe and Henry Doe shall obligate themselves, for a period of ten (10) years after the consummation of such purchase, not to engage, or become interested in, directly, or indirectly, as individuals, partners, stockholders, directors, officers, or clerks, in the business (other than in that of the Optionee, or his transferee) of buying, manufacturing, or selling, glucose, or grape sugar, or any by-products of a glucose factory, within a radius of five hundred (500) miles of the City of Peoria, State of Illinois.

(b) The Optionor further agrees, in the event of the consummation of the purchase of the property embraced in this contract, that it will forthwith, upon demand by the Optionee, or his transferee, execute, or cause to be executed, by itself, or by its officers, such other and further, proper and reasonable instruments of transfer as may be required by the Optionee, or his transferee, for the purpose of carrying out the purposes and provisions of this agreement.

8. (a) In case any appraisal shall be necessary under this agreement, then, and in such event, such appraisal shall be made by three appraisers; and each party hereto shall appoint one such appraiser, and the two so chosen shall, thereupon, select the third appraiser. The award of the majority of such appraisers shall be binding and conclusive upon the parties hereto.

(b) The appointment of such appraisers by the respective parties hereto shall be made by each of said parties within ten (10) days after receiving notice from the other to make such appointment. The failure of either party so to appoint an appraiser, shall authorize the other to make an appointment for the one so in default; and the two appraisers so appointed shall, in such event, select a third appraiser, within five (5) days after their appointment. If such two appraisers shall fail, or shall be unable, within such time, to select a third appraiser, then any judge of any court of record in Peoria County, State of Illinois, upon application made by either party hereto for that purpose, is hereby authorized and empowered to appoint such third appraiser.

(c) The award to be made by the appraisers hereunder shall be

made, within fourteen (14) days after the appointment of the third appraiser.

9. That all payments hereunder shall be made in current New York City funds.

10. It is expressly understood and agreed that this instrument may be transferred and assigned by the Optionee, and that, when so transferred and assigned, this instrument, and all of its parts and provisions, shall inure to the benefit, and run in favor of, and be obligatory upon, such transferee, with the same force and effect as though such transferee had originally been the Optionee herein; and, in case of such transfer and assignment by the Optionee, all of his rights, as well as all of his obligations hereunder, whatsoever the same may be, shall forthwith cease and terminate.

IN WITNESS WHEREOF, the Optionor has signed this instrument by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, and the Optionee has hereunto set his hand and seal, the day and year first above written.

Doe Glucose Company,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

No. 327.

Agreement of corporation granting option to purchase its treasury stock, with a right of cancellation, if the brokers fail to sell stipulated amounts at stated intervals.²

THIS AGREEMENT, made January 5, 1923, by Doe Petroleum Co., Inc., a corporation, having an office at No. 11½ Main Street, Tulsa, Oklahoma (herein called the "First Party"), and Richard Roe and Henry Koe, engaged in business as partners, under the firm name of Roe & Koe, and having an office at No. 371½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

² Cf. *Heller v. Pope* (1918), 183 App. Div. 864, 171 N. Y. Supp. 619; *Donovan v. Powers Film Products, Inc.* (1920), 111 Misc. 276, 181 N. Y. Supp. 157.

WHEREAS, the First Party is a corporation, duly organized under the laws of the State of Oklahoma, and has an authorized capital stock, consisting of one million (1,000,000) shares of common stock, each of the par value of one (\$1) dollar, all full paid and non-assessable; and

WHEREAS, the Second Party is engaged in the stock brokerage business, and has facilities for the sale of corporate stock; and

WHEREAS, six hundred thousand (600,000) shares of common stock are now in the treasury of the First Party unsold, and the First Party desires to dispose of the said shares, all as hereinafter more particularly set forth:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the First Party hereby gives to the Second Party, and the Second Party hereby accepts, the exclusive right to purchase from the First Party six hundred thousand (600,000) shares of its common stock, at the price of one (\$1) dollar a share.

2. That, simultaneously with the execution of this agreement, the Second Party shall pay to the First Party ten (10%) per cent of the purchase price of the aforesaid six hundred thousand (600,000) shares of common stock, subject, nevertheless, to the terms and conditions hereinafter stated.

3. That the Second Party may exercise the aforesaid option, from time to time, taking on each occasion such an amount of shares of the First Party's common stock, as the Second Party may elect.

4. (a) That the First Party shall, in writing, forthwith direct its registrar and transfer agent, the Doe Trust Co., whose office is in the Borough of Manhattan, New York City, or any other registrar and transfer agent hereafter appointed by it, to issue, or cause to be issued, one or more of its shares of common stock in the name of the Second Party, or in the name of such other person, or persons, as the Second Party shall designate, and shall cause the said Doe Trust Co., or any other registrar and transfer agent hereafter appointed by it, to deliver forthwith as many of such shares of stock to the Second Party, as the Second Party shall tender payment therefor, at the rate of ninety (90¢) cents a share, to the Koe Trust Co., or any other registrar and transfer agent hereafter appointed by the First Party, either in cash or by certified check, drawn to the order of the First Party; it being understood and agreed that the difference between such ninety (90¢) cents per

share and the price of one (\$1.00) dollar per share shall be charged and deducted by the First Party from the payment of the Second Party provided for in paragraph "2" hereof.

(b) That, if the First Party shall exercise its right to cancel this contract, as provided in paragraph "9" hereof, then, and in such event, the First Party shall apply so much of such ten (10%) per cent payment, mentioned in paragraph "2" hereof, as shall not then have been applied towards the payment of shares of common stock theretofore received by the Second Party, to the payment of as many shares of the First Party's common stock as such balance will then pay for, at the rate of one (\$1) dollar per share; and such share, or shares, of common stock shall be issued in the name of the Second Party, or in the name, or names, of such other person, or persons, as the Second Party shall designate; and the First Party, upon the demand of the Second Party, shall deliver the same, or cause the same to be delivered, to the Second Party.

5. (a) That annexed hereto, and made a part hereof, is a schedule, marked "Exhibit A," which contains a full and true list and description of all of the leases, owned by the First Party; and the First Party represents to the Second Party that each of said leases is now in full force and effect; that it has legal title to each of them; and that each of said leases is free from any and all encumbrances of any kind or description whatsoever, except that the First Party is obligated to pay a yearly royalty of not more than two (\$2) dollars an acre on such of said leases as affect demised premises which are not oil producing, and a royalty of one-eighth of the oil produced from any of the lands affected by any of said leases which are oil producing.

(b) That the First Party represents to the Second Party that it now has thirty-nine (39) producing oil wells on its said leased properties, with a settled monthly production of four thousand (4,000) barrels of oil; that such oil is being sold by it to the Smith Pipe Line Co. at the price of three and one-half (\$3.50) dollars a barrel, and that the whole of the proceeds thereof are received by, and belong to, the First Party, except the one-eighth royalty aforementioned; and that the First Party, also, has gas wells on its said leased premises, from which it receives a net revenue of about three hundred (\$300) dollars a month.

6. That annexed hereto, marked "Exhibit B," and made a part

hereof, is a full and true copy of the First Party's balance sheet as of December 31, 1922.

7. That the First Party represents to the Second Party that the annexed statement, marked "Exhibit C," and made a part hereof, contains a complete list of the dividends, which the First Party has heretofore duly, properly and regularly paid to its stockholders, with the dates of the respective payments thereof.

8. That the First Party shall, whenever requested by the Second Party, (a) furnish to the Second Party, in writing, information, concerning the condition of its business affairs and financial condition, and (b) execute, or cause to be executed, such documents, and other instruments, as may be necessary to permit its said shares of common stock to be sold, or offered for sale, under the provisions of the Blue Sky Laws, so-called, of any state, or states, of the United States, that the Second Party may designate.

9. That, if the Second Party shall not take up stock in an amount, which will net the First Party the sum of twenty-five thousand (\$25,000) dollars, within thirty-five (35) days from the date hereof, and a further amount, or amounts, of stock, which shall net the First Party the additional sum of twenty-five thousand (\$25,000) dollars, within each period of thirty (30) days thereafter, then, and in any such event, the First Party shall have the right to cancel and terminate this contract, by giving to the Second Party ten (10) days' written notice of its intention to exercise such right of cancellation; but it is expressly understood and agreed that such right of cancellation shall be the sole and exclusive remedy, which may be exercised by the First Party, upon, or by reason of, the failure of the Second Party either to take up the amount, or amounts, of stock hereinbefore provided for, or the entire amount of stock provided for under its option herein; provided, however, anything to the contrary herein notwithstanding, that it is expressly understood and agreed that, in addition to the delivery of stock provided for in paragraph "4" hereof, the First Party, after exercising its right of cancellation, shall continue to supply the Second Party, with its shares of stock, at the price hereinbefore specified, for a period of ten (10) days after notice of cancellation shall have been received by the Second Party, to enable such Second Party to deliver shares of the First Party's common stock, upon any contract, or contracts, theretofore made

by the Second Party, for the sale of shares of common stock of the First Party.

10. That this agreement shall begin on the date hereof, and shall continue for a period of ten (10) months thereafter, unless the Second Party, prior thereto, shall have disposed of such six hundred thousand (600,000) shares of common stock of the First Party.

IN WITNESS WHEREOF, the First Party has signed this instrument, by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, and the Second Party has hereunto affixed his hand and seal, the day and year first above written.

Doe Petroleum Co., Inc.,

By John Doe,
President.

(Seal)

Attest:

Henry Jones,
Secretary.

Roe & Koe (L.S.),
By Richard Roe.

[Annex Schedules of Properties, Balance Sheet & Dividend List.]

No. 328.

Agreement of corporation to purchase from promoters businesses and properties of various partnerships and corporations, which promoters propose to acquire.³

THIS AGREEMENT, made January 5, 1923, by the Doe Steel Corporation, a corporation, duly organized under the laws of the State of New Jersey, and having an office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Steel Corporation"), party of the first part, and Richard Roe and Henry Koe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, as joint-tenants, and not as tenants in common (herein called the "Consolidation Purchasers"), parties of the second part, WITNESSETH:

WHEREAS, the Steel Corporation is organized for the purpose, among other things, of engaging in the business of manufacturing,

³ Adapted from *U. S. v. U. S. Steel Corp.* (1919), 251 U. S. 417, 40 Sup. Ct. Rep. 293, 64 Law ed. 343.

buying, selling, or dealing in, all tubular, and other, products, of iron, steel and other metals, fittings, tools, supplies, machinery, apparatus, and projectiles, and all other materials of war; and

WHEREAS, the Steel Corporation has issued its capital stock, paid for at par in cash, to the amount of five thousand (\$5,000) dollars, equally divided into seven (7%) per cent cumulative preferred stock and common stock, having the relative preferences and the status set forth in its articles of incorporation, to which reference is hereby made as a part hereof; and

WHEREAS, the Steel Corporation contemplates an increase of its said preferred stock to an authorized amount of forty million (\$40,000,000) dollars, and of its said common stock to an authorized amount of thirty-five million (\$35,000,000) dollars; and

WHEREAS, the Steel Corporation desires to acquire the properties and businesses, and the capital stocks of several corporations, owning properties and businesses, of the character covered by the purposes set forth in its articles of incorporation, concerning which, and the value of which properties and businesses, it has instituted inquiry; and

WHEREAS, the Consolidation Purchasers, having a similar purpose, already have opened, and now are conducting, negotiations for the acquisition by them of various properties necessary to the purposes of the Steel Corporation; and

WHEREAS, the Steel Corporation has propositions to purchase properties and businesses of the aforesaid character from the Consolidation Purchasers, upon the terms hereinafter stated, and, also, to secure a cash working capital, necessary for the conduct of its business:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

ARTICLE 1. The Steel Corporation, for itself, its successors and assigns, covenants and agrees to purchase, and to take, from the Consolidation Purchasers, their heirs, executors, survivors and assigns, at any time, within the period of four (4) months from the date hereof, the real property, plants, machinery, merchandise and good-will of the following named corporations, or partnerships, or shares of the capital stock of, or other interests in, such corporations, or firms, *viz.*:

- (a) Doe Tube Works Company,
- (b) Roe Tube Works, Inc.,
- (c) Koe Tube Corporation,

- (d) Doe Steel Mills, Inc.,
- (e) Koe & Doe Steel Company,
- (f) Roe & Doe Milling Company,

all for the greed price, or consideration, of seventy million (\$70,000,000) dollars, payable, as follows: One-half thereof in its said seven per cent cumulative preferred stock, at par, and one-half thereof in its said common stock, at par.

ARTICLE II. (a) In the event that the Consolidation Purchasers shall be unable to convey and deliver to the Steel Corporation, within the period aforesaid, any one, or more, of the properties, capital stocks, or interests, as aforesaid, the said agreed price or consideration, which is specified in "Article I" hereof, shall be, and hereby is, abated and reduced in such amount as may be mutually agreed upon between the parties hereto as the fair and reasonable value of any such property, capital stocks, or interests, not so conveyed and delivered; and if, in such event, the said parties hereto shall be unable promptly to agree as to the amount in which such agreed price or consideration shall be so abated and reduced, then, and in every such event, such amount shall be ascertained, fixed and determined by arbitration, *viz.*: Each party hereto shall select one arbitrator, and the two so chosen shall select a third, and the three so chosen shall ascertain, fix and determine the same, and the determination of such arbitrators, made with, or without, hearing, or notice, shall be absolute and conclusive upon the parties hereto as to the fair and reasonable value of any such property, stocks, or interests, not so conveyed and delivered hereunder, within the period aforesaid; and the price, or consideration, as above stated, or as so abated and reduced, in accordance with the agreement of the parties hereto, or the determination of the arbitrators, shall thereupon be payable in the manner aforesaid.

(b) But, nevertheless, if, and when, the Consolidation Purchasers shall offer to convey, or cause to be conveyed, to the Steel Corporation, at any time, within two (2) years thereafter, all, or any, of the properties, capital stocks, or other interests, which they may fail to deliver within the said first mentioned period, the Steel Corporation agrees to purchase, take and pay for the same in the same manner as originally provided, at a price equal to the amount so abated.

ARTICLE III. The properties, capital stocks, or other interests, which are referred to in "Article I" and "Article II" hereof, shall

be considered and valued not as separate and individual properties independently of their relation to each other, nor, necessarily, at their cost, as separate properties, to the Consolidation Purchasers, but, so far as delivered hereunder, such properties shall be considered and valued as an entirety and as constituting together one single going concern, it being mutually recognized and agreed that, through a common ownership, the value thereof to the Steel Corporation will be greatly enhanced, by reason of the increased earning power, the diminished expenses of operation, the saving in cost of manufacture, sale, delivery, and management, and otherwise.

ARTICLE IV. All payments and deliveries hereunder shall be made at the office of the Steel Corporation, at No. 111½ Broadway, Borough of Manhattan, New York City, and all titles, conveyances and questions of a legal nature, which may be involved in the consummation of this contract, shall be subject to the approval of counsel to be designated by the Steel Corporation.

ARTICLE V. The parties hereto shall make, execute and deliver all such conveyances, and other instruments, and will do such acts and things as may be reasonably required, the one from the other, to fully carry out the purposes of this agreement.

IN WITNESS WHEREOF, the Steel Corporation has signed this instrument by its President, thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary; and the parties of the second part have hereunto set their hands and seals, the day and year first above written.

Doe Steel Corporation,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).
Henry Koe (L.S.).

No. 329.

Agreement of corporation to purchase from syndicate manager bonds and stocks of various corporations, which syndicate proposes to acquire.⁴

THIS AGREEMENT, made January 5, 1923, by the Doe Steel Corporation, a corporation, organized under the laws of the State of New Jersey, and having an office at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "Steel Corporation"), party of the first part, and Richard Roe, residing at No. 371½ Broadway, Borough of Manhattan, New York City, acting in behalf of a Syndicate, party of the second part, WITNESSETH:

WHEREAS, the Steel Corporation has been organized with a capital stock of three thousand (\$3,000) dollars, of which one-half is seven per cent cumulative preferred stock, and one-half is common stock, as shown by the certificate of incorporation of the Steel Corporation, recorded in Hudson County, New Jersey, on the 24th day of December, 1922, which capital stock is to be increased, as hereinafter provided; and

WHEREAS, as hereinafter stated, the board of directors of the Steel Corporation deems it necessary for its business now to acquire the stocks and bonds of certain other corporations, and, also, to obtain for its corporate purposes a certain sum in cash; and

WHEREAS, after careful investigation and appraisalment, the board of directors of the Steel Corporation has ascertained, adjudged and determined that the value of such bonds and stocks, now so to be acquired and hereinafter specified, exclusive of such cash sum (which cash sum is to be received and treated by the Steel Corporation as surplus) is equal at least to the par value of the stock of the Steel Corporation and of the bonds of the Steel Corporation to be issued therefor; and

WHEREAS, the board of directors of the Steel Corporation considers that such bonds, stocks and cash may best be obtained by purchase, upon the terms hereinafter stated, from the Syndicate represented by Richard Roe, party of the second part hereto, and manager of said Syndicate; and

WHEREAS, each of the corporations, the capital stock of which it

⁴ Adapted from *U. S. v. U. S. Steel Corp.* (1919), 251 U. S. 417, 40 Sup. Ct. Rep. 293, 64 Law ed. 343.

is proposed now to acquire hereunder, has been organized and now is existing, under the laws of the State of New Jersey, and has an outstanding capital stock divided into shares, each of the par value of one hundred (\$100) dollars (excepting the Koe Company, of which the capital stock is divided into shares of the par value of one thousand [\$1,000] dollars each), and divided, also, into classes, as next hereinafter stated, the said corporations, and the total outstanding capital stock and the classes thereof, being, as follows, to wit:

<i>Name of Corporation.</i>	<i>Total Outstanding Capital Stock.</i>	
	<i>Preferred.</i>	<i>Common.</i>
Doe Sheet Steel Co.,	\$24,500,000	\$24,500,000
Doe Steel Hoop Co.,	14,000,000	19,000,000
Doe Steel & Wire Co.,	40,000,000	50,000,000
Koe Company,	100,000,000

and

WHEREAS, the Koe Company has issued, and there are now outstanding, its five (5%) per cent bonds for the aggregate principal sum of one hundred and sixty million (\$160,000,000) dollars; and

WHEREAS, the Syndicate has arranged for the acquisition of substantially all of the bonds and the stock of the Koe Company; and

WHEREAS, in reliance upon this contract, the Syndicate is endeavoring to effect the acquisition and the delivery of all of the bonds of the Koe Company, and of all of the outstanding shares of the capital stock of all of said corporations, upon the terms herein provided:

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF OTHER GOOD AND VALUABLE CONSIDERATIONS, AND OF THE EFFORTS AND EXPENSES WHICH BOTH PARTIES RECOGNIZE WILL HAVE TO BE MADE AND INCURRED BY THE SYNDICATE IN THEIR ENDEAVOR TO CONSUMMATE SUCH SALE:

FIRST: The Steel Corporation agrees with Richard Roe, acting in behalf of the Syndicate, as follows:

(1) If, on or before May 31, 1923, Richard Roe, in behalf of the Syndicate, shall

(a) Sell and deliver, or cause to be sold and delivered, to the Steel Corporation, at least fifty-one (51%) per cent of such outstanding shares of the capital stock of each of the corporations above named, or of such of said corporations as finally shall be

embraced within the operation of this agreement with the approval of the Steel Corporation, with fifty-one (51%) per cent of the total outstanding preferred stock, if any, of such company; and, also, all of the one hundred and sixty million (\$160,000,000) dollars of bonds of the Koe Company now outstanding, or such lesser amount thereof as shall be tendered by Richard Roe; and

(b) Shall pay, or cause to be paid, to the Steel Corporation twenty-five million (\$25,000,000) dollars in cash:

(2) The Steel Corporation will purchase such shares and bonds, and, in payment and consideration for such stock and bonds, and for such cash, will issue to such persons as Richard Roe, in behalf of the Syndicate, shall indicate, shares of its preferred stock and shares of its common stock (all of which shall be full paid and non-assessable), and, also, its five (5%) per cent Gold Bonds (which bonds shall be of such form and tenor, and shall be secured, as Richard Roe may determine), as follows:

(a) In the event that the Steel Corporation shall acquire all of the shares of the capital stock of all of such other corporations and all of such bonds of the Koe Company, the Steel Corporation will issue, for all such stock, and for such bonds, and for such sum in cash, four million, two hundred forty-five thousand, nine hundred and eighty-five (4,245,985) shares of its preferred stock, and four million, two hundred forty-nine thousand, nine hundred and eighty-five (4,249,985) shares of its common stock, and, also, three hundred and four million (\$304,000,000) dollars of its said five (5%) per cent gold bonds.

(b) In the event that the Steel Corporation shall not acquire all of the shares of the capital stock of all of such other corporations and all of such bonds of the Koe Company, the Steel Corporation will issue, for the shares of stock and the bonds which shall be acquired, and for the said sum in cash, four million, two hundred forty-five thousand, nine hundred and eighty-five (4,245,985) shares of its preferred stock and four million two hundred forty-nine thousand, nine hundred and eighty-five (4,249,985) shares of its common stock, and three hundred and four million (\$304,000,000) dollars of its five (5%) per cent gold bonds, less abatement and deduction therefrom, to be made as follows:

(aa) For each one hundred (\$100) dollars par value of stock of such other companies, mentioned in the following table, which shall not be acquired by the Steel Corporation, the amount of the

preferred stock and common stock, or either, set opposite such class of stock in said table, shall be deducted and abated, viz.:

<i>Name of Corporation and Class of Stock.</i>	<i>Amount of Stock to be Deducted in Par Value.</i>	
	<i>Preferred Stock.</i>	<i>Common Stock.</i>
Doe Steel Co., Preferred Stock,	\$100
Common Stock,	\$100
Doe Steel Hoop Co.,		
Preferred Stock,	100
Common Stock,	100
Doe Steel & Wire Co.,		
Common Stock,	102.50
Koe Company,	150	150

(bb) For each one thousand (\$1,000) dollars par value of such bonds of the Koe Company that shall not be acquired by the Steel Corporation, one thousand (\$1,000) dollars par value of such bonds of the Steel Corporation shall be abated and deducted.

SECOND. The Steel Corporation further agrees that, in the event of the acquisition by it, pursuant to this agreement, of less than the total issue of said bonds of the Koe Company, or less than the total outstanding capital stock of each of said corporations, the Steel Company, from time to time, will purchase from such persons as shall be indicated by Richard Roe, any and all additional outstanding bonds of the Koe Company or shares of the capital stock of any of said corporations that shall be tendered to the Steel Corporation prior to May 1, 1924; and, in payment therefor, will issue and deliver its bonds and fully paid-up shares of its preferred stock and fully paid-up shares of its common stock, at the rates at which deduction and abatement shall have been made, under "Article First" hereof, in respect of the additional bonds and shares of stock so purchased.

THIRD. (a) The Steel Corporation shall credit and allow to Richard Roe, on account of the cash sum payable under "Article First" hereof, or shall pay to Richard Roe, a sum equal to the aggregate amount which, prior to April 1, 1923, shall have accrued upon any installment of dividends accruing, but not matured, upon any such preferred stock, at the date of delivery thereof to the Steel Corporation.

(b) The Steel Corporation further agrees that the dividends

upon all of the preferred stock of the Steel Corporation, to be issued by it hereunder, shall begin to accrue from April 1, 1923.

FOURTH. The Steel Corporation, without prejudice to the further exercise of its chartered rights to increase or to decrease its capital stock, agrees that it will lawfully increase its authorized capital stock to an amount sufficient to enable it to issue and to deliver its preferred stock and its common stock to the aggregate amount hereinbefore provided.

FIFTH. Richard Roe, in behalf of the Syndicate, will bear and will pay the statutory fees and taxes, for the proposed increase of the capital stock of the Steel Corporation.

SIXTH. This agreement, and any agreement in pursuance thereof, is and shall be *inter partes*; and no stockholder of any corporation above referred to shall be deemed to have any right hereunder.

IN WITNESS WHEREOF, the Steel Corporation has signed this instrument, by its President, thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary, and the party of the second part has hereunto set his hand and seal, the day and year first above written.

Doe Steel Corporation,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

No. 330.

Agreement of employer granting to employee prior option to purchase his business, upon his election to sell, or at his death, if employee then is in his employ.⁵

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Optionor"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Optionee"), WITNESSETH:

WHEREAS, the Optionor now is engaged in the business of selling

⁵ Cf. *In re Walbridge* (1901), 198 N. Y. 234, 91 N. E. 590; *Fitzsimmons v. Lindsay* (1903), 205 Pa. St. 79, 54 Atl. 488.

hats, in the premises known as No. 11½ Broadway, Borough of Manhattan, New York City, and is the owner of the fixtures and stock in trade now in the store of said premises; and

WHEREAS, the Optionee is employed by the Optionor in the said business; and

WHEREAS, the Optionor desires to retain the services of the Optionee in the said business, during the lifetime of the Optionor, or as long as the Optionor shall be engaged in said business:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the Optionor hereby gives to the Optionee, and the Optionee hereby accepts, the exclusive right to purchase, upon written demand made by the Optionee, as hereinafter provided, the aforesaid hat business, and the good-will thereof, together with the fixtures and stock in trade, now, or hereafter, used in the said business of the Optionor.

2. (a) That, if the Optionor, at any time, shall decide to offer the said business, good-will, fixtures and stock in trade for sale, the Optionor, before selling, or attempting to sell; the same, to any person or persons, or corporation or corporations, shall give written notice of such intention to the Optionee; and, thereupon, the Optionee may, within fourteen (14) days after the receipt by him of such notice, exercise his said option, by giving to the Optionor written notice of his intention to do so.

(b) That, if the Optionor shall die, during the lifetime of the Optionee, the Optionee may, within fourteen (14) days after the appointment of an executor or administrator of the Optionor, but not thereafter, exercise his said option, by giving a written notice of his intention to do so to such executor, or administrator.

3. That the Optionor shall, at all times, preserve and retain all bills for fixtures, or for merchandise, used in said business, and it is expressly understood and agreed that, upon the Optionee giving, as herein provided, any notice of his intention to exercise his said option, all bills, relating to fixtures, or to merchandise, then in said business, shall, within two (2) days thereafter, be exhibited to the said Optionee.

4. That the purchase price for said business, good-will, fixtures and stock in trade, as and when the said option shall be exercised by the Optionee, shall be the actual prices paid by the Optionor for the fixtures and stock in trade then actually on hand, as shown by the said bills, and shall be paid by the Optionee, either in cash,

or by certified check to the order of the Optionor, if he shall then be living, or, in the event of his death, to the order of the executor, or administrator, of the Optionor, within ten (10) days after written notice of the intention to exercise the option shall have been served; and, simultaneously with such payment, the Optionor, or, in the event of his death, his executor, or administrator, shall execute and deliver to the Optionee full and sufficient bills of sale, assignments and all such other instruments as shall be necessary, or useful, in the opinion of counsel for the Optionee, to effectuate the sale, assignment and transfer of all of the said business, goodwill, fixtures and stock in trade.

5. That, if the Optionee shall not have been in the employ of the Optionor, during all the time between the date hereof and the time or times fixed for the exercise of the aforesaid option, or, if the Optionee shall not, within the time prescribed therefor (1) give notice of his intention to exercise the option, and (2) pay the aforementioned purchase price, then, and in any such event, this agreement shall forthwith become null and void.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.),
Richard Roe (L.S.).

In the presence of
John Jones.

No. 331.

Agreement of principal stockholder of corporation and one of its stock-owning employees, whereunder former guaranties a minimum return to the employee upon his stock, and former, also, is given an option to purchase the stock of employee, if employee ceases to work for the corporation, and employee is granted an option to sell his shares of stock to former, at any time, with a covenant by employee not otherwise to alienate his shares of stock.⁶

THIS AGREEMENT, made January 5, 1923, by John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), Doe Laundry Co., Inc., a cor-

⁶ Adapted from *Frankenberg v. Perlman* (1918), 223 N. Y. 673, 119 N. E. 1043.

poration, having its principal place of business at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), and Richard Roe, residing at No. 57½ Broadway, Borough of Manhattan, New York City (herein called the "Third Party"), WITNESSETH:

WHEREAS, the First Party was heretofore the owner of a laundry business, known as Doe Wet Wash Laundry Co., at No. 37½ Broadway, Borough of Manhattan, New York City, and the Third Party was employed by the First Party therein; and

WHEREAS, the First Party caused the Second Party to be duly organized under the laws of the State of New York, with an authorized capital stock, consisting of one thousand (1,000) shares of common stock, each of the par value of one hundred (\$100) dollars, all full paid and non-assessable; and

WHEREAS, the First Party sold his said laundry business to the said Second Party, and received, as consideration therefor, the entire capital stock of the said Second Party; and

WHEREAS, the First Party, in order to induce the Third Party to enter the employ of the Second Party, thereafter assigned and delivered to the Third Party thirty (30) shares of the capital stock of the Second Party; and

WHEREAS, the Third Party, in consideration of the assignment and delivery to him of the said thirty (30) shares of the capital stock of the Second Party, entered into an agreement with the Second Party, whereunder the Third Party agreed to enter the employment of the Second Party:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That, at any time within five (5) years from the date hereof, the Third Party shall have the right, upon giving sixty (60) days notice in writing to the First Party, to demand and receive from the First Party the par value of all, or any part, of the shares of capital stock of the Second Party, which may be owned by the Third Party; and, after such notice shall have been given by the Third Party to the First Party, the First Party shall, at, or before, the expiration of such sixty (60) days, purchase and pay the par value of all, or any, of the said shares of capital stock owned by the Third Party, which the Third Party, in his notice aforesaid, shall have so offered for sale to the First Party.

2. That, if the Third Party shall, at any time, cease to be employed by, or work for, the Second Party, then, and in any such

event, the First Party shall have the right, within sixty (60) days after the time that the Third Party shall have ceased to work for, or be employed by, the Second Party, to purchase from the Third Party, at the par value thereof, all of the shares of the capital stock of the Second Party, owned by the Third Party.

3. That the First Party guaranties that the dividends upon the shares of capital stock of the Second Party, while owned by the Third Party, shall amount to not less than six (6%) per cent per annum, for the period of five years from the date hereof; and in case the dividends paid, during any year, or years, of such period, shall be less than six (6%) per cent, the First Party shall personally pay to the Third Party, at the end of each year, the difference, if any, between the dividend, or dividends, which shall have been declared and paid by the Second Party, and the said amount of six (6%) per cent.

4. That the Third Party shall not sell, assign, transfer or pledge any of the shares of capital stock of the Second Party, owned by the Third Party (except as hereinbefore provided), without first giving to the First Party sixty (60) days' notice in writing to purchase said shares of capital stock, at the par value thereof.

5. That if the First Party shall not purchase and pay for such shares of capital stock, within sixty (60) days after written notice shall have been given to him, then, and in such event, the Third Party shall have the right to sell, assign, transfer or pledge such shares of capital stock, or any part thereof, to, or with, any person, or persons, corporation, or corporations; but it is expressly understood and agreed that the remedy herein provided for shall be in addition to, and not exclusive of, any other remedy, or remedies, which the Third Party otherwise might avail himself of under, or by virtue of, any of the provisions, terms and conditions of this agreement.

6. That the shares of capital stock issued and delivered to the Third Party shall have stamped, upon the face thereof, a statement that such stock is issued and held, under and pursuant to the terms of this agreement; and that a copy of this agreement shall be filed in the office of the Second Party; and that no sale, assignment, transfer, or pledge, of any such shares of capital stock of the Second Party, owned by the Third Party, shall be binding, or valid, if the same shall be in contravention of any of the terms, provisions or conditions of this agreement; and the First and Second Parties

shall not recognize, or be compelled to recognize, as binding, or valid, any such sale, transfer, assignment, or pledge, of any such shares of capital stock owned by the Third Party, if so made in contravention of any of the terms, provisions or conditions of this agreement.

7. That all notices provided for herein shall be given by registered mail, addressed to the First Party, at the address appearing on the books of the Second Party, at the time such notice shall be given.

8. That this agreement shall bind the parties hereto, and their respective heirs, representatives and assigns.

IN WITNESS WHEREOF, the Second Party has signed this instrument, by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, and the First and Third Parties have hereunto set their hands and seals, the day and year first above written.

Doe Laundry Co., Inc.,
By John Doe,
President.

(Seal)

Attest:

Henry Koe,
Secretary.

John Doe (L.S.).
Richard Roe (L.S.).

CHAPTER XVII
PARTNERS

Section 1.—Agreements of Partnership.

- No. 332—Agreement of partnership—short form.
No. 333—Agreement of partnership—long form.
No. 334—Agreement of limited partnership.

Section 2.—Miscellany.

- No. 335—Agreement of dissolution of partnership.
No. 336—Clause continuing partnership among surviving partners.
No. 337—Clause continuing partnership with personal representative of deceased partner.
No. 338—Clause providing one party shall contribute sums in excess of his contribution to the partnership, upon written request of the other party.
No. 339—Clause providing for increase of capital of partnership, upon written request of majority.
No. 340—Clause providing for distribution of securities, upon dissolution of partnership.

SECTION 1.—AGREEMENTS OF PARTNERSHIP.

No. 332.

Agreement of partnership—short form.¹

AGREEMENT, made January 5, 1923, between John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 371½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

¹ Cf. *Solomon v. Solomon* (1847), 2 Ga. 18; *Bradbury v. Smith* (1842), 21 Me. 117; *Near v. Lowe* (1885), 56 Mich. 632, 23 N. W. 448; *Poss v. Gottlieb* (1922), 118 Misc. 318, 193 N. Y. Supp. 418.

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That the parties hereto shall, as partners, engage in and conduct the business of buying, selling and dealing in dry goods, at wholesale and retail.

2. That the name of the partnership shall be John Doe & Co.

3. That the term of the partnership shall begin on January 5, 1923, and shall end on January 4, 1925.

4. That the place of business of the partnership shall be located at No. 57½ Broadway, Borough of Manhattan, New York City.

5. (a) That the capital of the partnership shall be the sum of ten thousand (\$10,000) dollars; and that each party shall contribute thereto, contemporaneously with the execution of this agreement, the sum of five thousand (\$5,000) dollars in cash.

(b) That neither party's contribution to the capital of the partnership shall bear interest in his favor.

6. That the said capital of the partnership, and all other moneys of, as well as all instruments for the payment of moneys to, the partnership, shall be deposited in the name of the partnership, in the Koe Trust Company, in the Borough of Manhattan, New York City, and all moneys credited therein to the partnership shall be subject to withdrawal only by check, made in the name of the partnership, and signed jointly by the parties hereto.

7. (a) That neither party shall, without the consent of the other, advance any moneys to the partnership, beyond the amount of his aforesaid contribution to the capital thereof; but any advance, if made by one party, with the consent of the other, shall bear interest, at the rate of six (6%) per cent per annum.

(b) That if either party shall, with the consent of the other, become indebted to the partnership, then such indebtedness shall bear interest, at the rate of six (6%) per cent per annum.

8. That each party shall devote all of his time and attention to the business of the partnership, and shall not, during the term of this partnership, either directly or indirectly, engage in any other business.

9. (a) That full and accurate accounts of the transactions of the partnership shall be kept in proper books, and each party shall cause to be entered upon said partnership books a full and accurate account of all of his transactions in behalf of the partnership.

(b) That the books of the partnership shall be kept at the place

of business of the partnership, and each party shall, at all times, have access to, and may inspect and copy, any of them.

10. That each party shall be entitled to draw one hundred (\$100) dollars a week from the funds of the partnership.

11. That neither party shall, without the consent of the other party, make, execute, deliver, endorse, or guaranty, any commercial paper, nor agree to answer for, or indemnify against, any act, debt, default, or misconduct of any person, or partnership (other than that of the parties hereto) or corporation.

12. (a) That, at the end of each calendar year, a full and accurate inventory shall be prepared, and the assets, liabilities and income, both gross and net, shall be ascertained, and the net profits, or net loss, of the partnership, shall be fixed and determined.

(b) That the net profits, or net loss, shall be divided equally between the parties hereto, and the account of each shall be credited, or debited, as the case may be, with his proportionate share thereof.

13. That, at the termination of this partnership, by the expiration of its term, or by reason of any other cause, a full and accurate inventory shall be prepared, and the assets, liabilities and income, both gross and net, shall be ascertained; that the debts of the partnership shall be discharged; and all moneys and other assets of the partnership, then remaining, shall be divided in specie, between the parties, share and share alike.

14. That, if any disagreement shall arise between the parties, in respect of the conduct of the partnership business, or of its dissolution, or in respect of any other matter, cause, or thing, whatsoever, not herein otherwise provided for, the same shall be decided and determined by arbitrators, and each party shall select one of such arbitrators, and both of such arbitrators shall select a third arbitrator, and the decision of two of such arbitrators, when made in writing, shall be conclusive upon the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

No. 333.

Agreement of partnership—long form.²

THIS AGREEMENT, made January 5, 1923, by John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), and Henry Koe, residing at No. 15½ Broadway, Borough of Manhattan, New York City (herein called the "Third Party"), WITNESSETH:

WHEREAS, the First and Second Parties heretofore entered into partnership, in the business, or profession, of accountancy and industrial engineering, under the firm name of Doe & Roe; and

WHEREAS, the said partnership of the First and Second Parties was dissolved by them as of January 4, 1923; and

WHEREAS, the parties hereto are severally the owners of certain assets, which have been separately valued by them, as set forth in "Exhibit A," which is hereto annexed, and hereby made a part hereof; and

WHEREAS, the assets set forth in "Exhibit A" as belonging to the First Party are of the value of ten thousand (\$10,000) dollars, and the assets set forth in "Exhibit A" as belonging to the Second Party are of the value of seven thousand (\$7,000) dollars, and the assets set forth in "Exhibit A" as belonging to the Third Party are of the value of five thousand (\$5,000) dollars; and

WHEREAS, the parties hereto are desirous of becoming partners in the business, or profession, of accountancy and industrial engineering, and to use therein the aforesaid assets of the parties hereto; and

WHEREAS, the First Party is to receive from the partnership the sum of five thousand (\$5,000) dollars, and the Second Party is to receive from the partnership the sum of two thousand (\$2,000) dollars, in consideration of entering into such partnership, all as hereinafter more particularly set forth:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

FIRST. That the parties hereto shall, as partners, engage in the

² Cf. *Von Bremen v. MacMonnies* (1910), 200 N. Y. 41, 93 N. E. 186; *Larbig v. Peck* (1903), 174 N. Y. 513, 66 N. E. 1111; *Guccione v. Scott* (1898), 33 App. Div. 214, 53 N. Y. Supp. 462.

business, or profession, of accountancy and industrial engineering, for a term of ten (10) years, from and after January 5, 1923.

SECOND. That the firm name of said partnership shall be Doe, Roe & Koe.

THIRD. That the business of said partnership shall be conducted at No. 37½ Broadway, Borough of Manhattan, New York City, and at such other place, or places, as the parties may select.

FOURTH. (a) That the gross assets with which the partnership shall begin business shall consist of all of the assets of the parties hereto, which are enumerated in "Exhibit A," which have been appraised and valued by the parties hereto, in the sum of twenty-two thousand (\$22,000) dollars, subject, nevertheless, to the payment and performance by the parties hereto of the several terms and conditions herein set forth.

(b) The gross assets shall belong to the parties hereto equally, and, in order so to vest such gross assets in them,

(1) the First Party hereby assigns to each of the other parties hereto an undivided equal one-third part of the gross assets described in "Exhibit A" as belonging to him;

(2) the Second Party hereby assigns to each of the other parties hereto an undivided equal one-third part of the gross assets described in "Exhibit A" as belonging to him; and

(3) the Third Party hereby assigns to each of the other parties hereto an undivided equal one-third part of the gross assets described in "Exhibit A" as belonging to him.

PROVIDED, HOWEVER, that, it being the intention of the parties hereto that the capital of this partnership shall, at the commencement thereof, consist of net assets in the amount of fifteen thousand (\$15,000) dollars, which shall be contributed in equal parts by the several parties hereto, out of the gross assets aforesaid, it is hereby agreed as follows:

That the difference of five thousand (\$5,000) dollars between the gross assets contributed by the First Party and the assets to be contributed to the capital of this partnership by the said First Party, shall be a debt due from the partnership to the First Party, and that the difference of two thousand (\$2,000) dollars between the gross assets contributed by the Second Party and the assets to be contributed to the capital of this partnership by the said Second Party, shall be a debt due from the partnership to the Second Party; and that each of said debts shall be payable, without in-

terest, to the respective parties, upon demand, out of the available funds of the partnership.

(c) That the aforementioned sum of five thousand (\$5,000) dollars, to be paid to the First Party, and the aforementioned sum of two thousand (\$2,000) dollars, to be paid to the Second Party, in consideration of their entering into this partnership, shall be non-interest-bearing debts, due from the partnership to each of said parties; and such debts shall be paid by the partnership, out of the net profits of the partnership, as provided in the article of this agreement numbered "Eight."

PROVIDED, HOWEVER, anything to the contrary herein in any wise notwithstanding, it is hereby expressly understood and agreed that the personal accounts of each of the parties hereto shall be credited, or debited, as the case may be, with any excess, or deficiency, that the partnership may realize, or suffer, from their respective accounts receivable, which are set forth as assets in "Exhibit A," beyond, or below, the amount at which the same may be valued in such "Exhibit A."

FIFTH. That the parties shall contribute in equal shares any additional capital that they may deem necessary for protecting, or furthering, the interests of the partnership.

SIXTH. If any party shall, with the written consent of the other parties, advance any moneys to the partnership, in excess of his contribution to its capital, the amount of such advance shall not be an increase of the capital of such party, or entitle him to any increase in his share of the profits thereof; but the amount of such advance shall be a debt due from the partnership to such party, and shall bear interest at the rate of six (6%) per cent per annum. Any such advance, with the interest thereon, shall be repaid by the partnership, within thirty (30) days after the partnership shall have elected, by notice in writing, to repay the same, or such party shall have, by notice in writing, elected to demand the repayment thereof.

SEVENTH. An account, in the name of the partnership, shall be maintained in such bank, or banks, in New York City, as the parties, from time to time, shall select. All moneys of the partnership, and all instruments for the payment of money to the partnership, shall, when received, be deposited in the bank account, or accounts, of the partnership; and all checks drawn thereon shall be signed with the firm name, and may be drawn by any of the parties.

EIGHTH. A. The net profits in each year shall be divided in the following order:

(1) Six thousand (\$6,000) dollars thereof shall be divided among the parties equally; and

(2) The next five thousand (\$5,000) dollars thereof shall be paid to the First and Second Parties, on account of the aforesaid moneys due to them, in consideration of their entering into this partnership, and such sum shall be paid to them, as follows:

(a) Three thousand (\$3,000) dollars thereof shall be paid to the First Party, and two thousand (\$2,000) dollars thereof to the Second Party. But, if the net profits remaining after the said payment of the aforementioned sum of six thousand (\$6,000) dollars shall be insufficient to pay to the First and Second Parties the sum of five thousand (\$5,000) dollars, then, so much of the net profits as shall remain after the payment of the said sum of six thousand (\$6,000) dollars, shall be divided equally between the First and Second Parties, and be received by them as payments on account of their aforesaid claims, and the difference between the moneys so actually received by each of them out of the said net profits for such purpose, and the moneys herein required to be paid to each of them out of the net profits for such purpose, shall be a debt due to each of them, the said First and Second Parties, which shall be payable to them on May 1, 1925. If, however, the accrued deficiency, in respect of such debts, in the intervening years, shall, on said date, exceed the sum of five thousand (\$5,000) dollars, then only five thousand (\$5,000) dollars thereof shall be paid to the said First and Second Parties on said date, in the respective proportions herein fixed, and the balance thereof shall be payable to them, share and share alike, in installments of five hundred (\$500) dollars on the first day of May in each succeeding year until the full amount of their aforesaid claims shall have been duly paid to the First and Second Parties.

(3) The balance of net profits, if any, remaining after the payment of the sums mentioned in subdivisions "(1)" and "(2)" hereof, shall be divided among the parties equally, and the parties shall, at all times, share all losses equally.

B. Any party may withdraw his share of the net profits, at the end of each, or any, fiscal, year. If a party shall not withdraw the whole, or any part, of his share of the net profits, he shall not be entitled to receive any interest upon any of his profits so unwith-

drawn, nor shall any such profits so unwithdrawn be deemed an increase of his capital, or entitle him to an increase in the share of the profits of the partnership.

NINTH. (a) That full and accurate accounts of all transactions of the partnership shall be kept in proper books of account, and each party shall enter, or cause to be entered therein, a full and accurate account of all of his transactions in behalf of the partnership.

(b) The books of account, and all other records of the partnership, shall, at all times, be kept in the place of business of the partnership, or, if there shall be more than one such place of business, the same shall be kept in the principal place of business of the partnership, and each party shall, at all times, have access to, and may inspect, and copy, any of them.

TENTH. Each party shall draw, at the end of each week, a salary of two hundred (\$200) dollars.

ELEVENTH. The life of each party shall be separately insured in the sum of twenty-five thousand (\$25,000) dollars, and the cost thereof, and all premiums thereon, during the term of this partnership, shall be charged as a part of the expense of the partnership. Each party shall make, execute and deliver to each of the other parties a good and proper assignment of one-third of his said policy of insurance, excluding and excepting therefrom, however, any right, or interest, in and to any income, which may accrue thereunder, in the event of his permanent disability.

TWELFTH. Each party shall, at all times:

(a) Pay and satisfy his own personal debts.

(b) Devote all of his time and attention to the business, or profession, of the partnership.

(c) Inform the other parties of all of his work for, and transactions in behalf of, the partnership.

(d) Neither assign, mortgage, nor sell, his share in the partnership, or any part thereof, or enter into any agreement as the result of which any person, firm, or corporation, shall become interested with him therein.

THIRTEENTH. None of the parties shall, without the written consent of the others, in behalf of the firm:

(a) Assign, transfer, pledge, compromise, or release, any of its claims, or debts, except upon payment in full, or arbitrate, or consent to the arbitration, of any of its disputes, or controversies.

(b) Make, execute and deliver any assignment for the benefit of creditors, or any bond, confession of judgment, chattel mortgage, deed, guaranty, indemnity bond, surety bond, or contract to sell, or contract of sale of, its entire personal property, or any other contract, under seal, whether similar or dissimilar to any of the foregoing.

(c) Hire, lease, purchase, sell, or mortgage, any real estate, or any interest therein, or enter into any contract for any such purpose.

(d) Borrow, or loan, money, or make, execute, deliver, accept, or endorse, any commercial paper, or, except for the ordinary purposes of the partnership, use the credit, money, or other property, of the partnership.

(e) Hire, or agree to hire, any person, or persons, for a definite period in excess of two (2) weeks, or discharge any person, or persons, who shall have been hired for a definite period in excess of two (2) weeks.

(f) Engage in any dealings, or transactions, with any person, partnership, or corporation, whom any of the other parties shall, previously, in writing, have requested him not to trust, deal with, or transact business with.

FOURTEENTH. Any party, who shall violate any of the terms, provisions and conditions of this agreement, shall, in addition to being subjected to the other remedies, liabilities and obligations herein imposed upon him therefor, keep and save harmless the partnership property, and shall, also, indemnify the other parties from any and all claims, demands and actions, which may arise out of, or by reason of, such a violation of any of the terms, provisions and conditions hereof.

FIFTEENTH. That on December 31st in each year, a full, true and accurate account shall be made in writing of all of the assets and liabilities of the partnership, and of all of its receipts and disbursements, and the interest of each party in the capital and other assets of the partnership, and in the net profits thereof, shall be ascertained, and the amount of net profits actually and without contingency earned, or the amount of net loss sustained shall, thereupon, be respectively credited or debited on the books of account of the partnership to the respective parties, share and share alike. In preparing such account, there shall be charged to the expense account the salaries paid to the parties hereunder, and all other

expenses of the business, and, also, all losses and other charges incident, or necessary, to the carrying on of the partnership business, or profession.

SIXTEENTH. A. If any party shall elect to retire from the partnership, before the end of the term fixed for its duration, then, and in such event, such party shall give to the other parties notice in writing of his election to retire, not less than sixty, nor more than seventy, days prior to the time at which he proposes to retire from the partnership; and the continuing parties shall pay to such retiring party:

(1) A sum equal to one-sixth of the value of the good-will of the partnership, which shall be paid in equal annual payments, during the remaining years fixed for the duration of the partnership; and the first of such annual payments shall be made at the time designated in said notice as the date of the retirement of such retiring party.

(2) The amount of his contributions to the capital of the partnership, less any losses thereto, shall be paid in equal annual installments, during the remaining years fixed for the duration of this partnership; and the first of such annual payments shall be made at the time designated in said notice as the date for the retirement of such retiring party.

(3) One-third of the net profits, which may have been earned between the date of the latest annual accounting of the partnership and the date of the occurrence of the retirement of such retiring party, together with any other accumulated profits standing to the credit of such party as then unwithdrawn.

B. Immediately upon any party giving notice of his intention to retire from the partnership, such retiring party thenceforth shall neither have, nor exercise, any rights, or powers, hereunder, except to receive the payment, or payments, to be made to him, in accordance with the provisions of this article of this agreement.

C. Such retiring party, upon receipt of the first payment mentioned in sub-paragraph "(1)" of this article, shall be deemed to have assigned, transferred, and set over to the continuing parties all of his right, title and interest in and to the said partnership, the good-will, firm name, and any other assets thereof, without any further act upon the part of such retiring party.

D. Such retiring party shall not, at any time, solicit, or perform, the work of any clients of the partnership, or of any of the

continuing parties, and shall not, at any time, disclose to any person, firm, or corporation, the name of any client, or clients, of the partnership, or any of its transactions; and such retiring party shall not, at any time, use the firm name nor, either in conjunction with his own name, or otherwise, use the words "formerly of Doe, Roe & Koe," or "late of Doe, Roe & Koe," or any other combination of words containing the firm name.

SEVENTEENTH. If any party shall become so physically disabled as to be unable to attend to the business, or profession, of the partnership, then, and in such event, the other parties agree to pay to such disabled party, the following:

(a) The amount of his contributions to the capital of the partnership, less any losses thereto, which may have been sustained; and such amount shall be paid to him in equal annual installments, during the remaining years fixed for the duration of this partnership, commencing with the end of the then expiring calendar year; and

(b) One-third of the net profits, which shall have been earned between the date of the latest annual accounting of the partnership and the date of the occurrence of the disability of such disabled party, together with any other accumulated profits standing to the credit of such party as then unwithdrawn; and

(c) One-third of the value of the good-will of the partnership, which shall be paid to him in equal annual installments, during the remaining years fixed for the duration of this partnership, commencing with the then expiring calendar year; and the first of such annual payments shall be made within sixty (60) days after the occurrence of such disability; and

(d) Ten (10%) per cent of the annual net profits of the partnership (which amount, however, shall not exceed the sum of ten thousand [\$10,000] dollars) in each of the remaining years fixed for the duration of this partnership. If such ten (10%) per cent of the yearly net profits shall not aggregate the sum of three thousand (\$3,000) dollars in any year, the sum of three thousand (\$3,000) dollars, nevertheless, shall be paid to the disabled party, and the moneys necessary to make up such minimum payment of three thousand (\$3,000) dollars shall be considered and charged as an expense of the business.

EIGHTEENTH. (a) If any party shall be guilty of misconduct of such a character as to render it impracticable for the parties to

carry on the partnership business, or profession, together, then, and in any such event, the offending party may be expelled from the partnership, upon the vote of a majority of the arbitrators appointed, or summoned, as hereinafter provided.

(b) Upon such expulsion, the other parties shall pay to such offending, or expelled, party, the following:

(1) An amount equal to fifty (50%) per cent of such offending party's share of the net profits received by him, during the immediately preceding year, or years, not exceeding five (5) in number.

(2) The amount of the expelled party's contributions to the capital of the partnership, less any losses thereto, which may have been sustained.

(3) One-third of the net profits of the partnership, which shall have been earned between the date of the latest annual accounting of the partnership, and the date of the occurrence of the expulsion of such expelled party, together with any other accumulated profits standing to the credit of such party as then unwithdrawn.

(c) Upon the receipt of the payments provided in sub-paragraphs "(1)," "(2)" and "(3)" of this article, the expelled party shall be deemed to have assigned, transferred and set over unto the continuing parties, all of his right, title and interest in and to the said partnership, the good-will, or any other assets thereof, without any further act upon the part of such offending, or expelled, party.

(d) From and after his expulsion, such expelled party shall not, at any time, solicit or perform the work of any clients of the partnership, or of any of the continuing parties, and shall not disclose to any person, firm, or corporation, the name of any client, or clients, of the partnership, or any of its transactions; and such expelled party shall not, at any time, use the firm name, nor, either in conjunction with his own name, or otherwise, use the words "formerly of Doe, Roe & Koe," or "late of Doe, Roe & Koe," or any other combination of words containing the firm name.

NINETEENTH. (a) The death of any party shall not terminate this partnership, but the same shall continue for the then remaining unexpired term, and the personal representative of the deceased party shall be entitled to receive, in full satisfaction and discharge of the deceased party's interest in the partnership, the following:

(1) The amount of the deceased party's contribution to the capital of the partnership, after deducting any losses thereto, which amount shall be paid in equal annual installments, during the remaining years fixed for the duration of this partnership, commencing with the end of the then existing calendar year.

(2) One-third of the net profits of the partnership, which shall have been earned between the date of the latest annual accounting of the partnership, and the date of the occurrence of the death of such deceased party, together with any other accumulated profits standing to the credit of such party as then unwithdrawn.

(3) One-third of the value of the good-will of the partnership, which shall be payable in equal annual installments, during the remaining years fixed for the duration of this partnership, commencing with the end of the then existing calendar year.

(4) Ten (10%) per cent of the net annual profits of the partnership (which amount, however, shall not exceed the sum of ten thousand [\$10,000] dollars) in each of the remaining years fixed for the duration of this partnership. If such ten (10%) per cent of the annual net profits shall not aggregate the sum of three thousand dollars in any year, the sum of three thousand (\$3,000) dollars, nevertheless, shall be paid, and the moneys necessary to make up such minimum payment of three thousand (\$3,000) dollars shall be considered and charged as an expense of the business.

(b) The personal representative of the deceased party shall be entitled, from time to time, at his own expense, to examine and inspect the books and records of the partnership.

TWENTIETH. The value of the good-will of the partnership, as used herein, for the purposes of this agreement, shall be ascertained, as follows:

(1) By adding the total of the net profits of the partnership, as shown in each annual accounting, which shall have been had up to the time when it shall become necessary to value such good-will; and

(2) Then deducting from the sum total of such net profits the loss, or losses, of the partnership, as shown in any annual accounting, during such period; and

(3) Dividing the remainder by the number of years that the partnership shall have been in existence, at the time when the value of such good-will is to be ascertained; and

(4) Multiplying the result of such division by two.

TWENTY-FIRST. That, in the event of the happening of any of the contingencies provided for in articles "Sixteenth," "Seventeenth," "Eighteenth," or "Nineteenth" hereof, during the term fixed for the continuance of the partnership, the said partnership shall not be thereby dissolved, but shall be continued by the continuing, or surviving, parties, for the remainder of the term fixed for the continuance of this partnership, upon the terms and conditions herein set forth; and the interest of any party in the partnership which may have ceased to exist, by virtue of any of the provisions contained in any of said articles, shall belong to, and vest in, the continuing, or surviving, parties, share and share alike, and such continuing, or surviving, parties, shall thereafter divide and bear equally all net profits, or net losses, which may thereafter be earned or suffered.

TWENTY-SECOND. That, if one party shall have elected to retire from the partnership, or shall have become so physically disabled as to be unable to attend to the business, or profession, of the partnership, or shall have been expelled from the partnership, in accordance with the provisions hereof, then and thereafter this partnership shall cease and determine, anything to the contrary hereof notwithstanding, if and when any other party thereafter shall elect to retire from the partnership, or thereafter shall become so physically disabled as to be unable to attend to the business, or profession, of the partnership, or thereafter shall be guilty of misconduct of such a character as to render it impracticable to carry on the partnership business or profession.

TWENTY-THIRD. (a) That, at the termination of this partnership, by the expiration of its term, or by reason of any other cause, a full and accurate inventory shall be prepared, and the assets, liabilities and income, both gross and net, shall be ascertained; that the debts of the partnership shall be discharged; and all of the assets of the partnership then remaining shall be divided in specie between, or among, the then partners, share and share alike.

(b) That, upon the termination of the partnership, as provided in sub-paragraph "(a)" of this article, none of the parties, who shall then be members of the partnership, shall thereafter use, or employ, the firm name, but each of such parties may advertise, or announce, that he was formerly a member of the partnership.

TWENTY-FOURTH. (a) That, if any disagreement shall arise be-

tween, or among, the parties, in respect of the conduct of the business, or profession, of the partnership, or of its dissolution, or in respect of any other matter, cause, or thing, whatsoever, not herein otherwise provided for, the same shall be decided and determined by arbitrators; and, if at any such time, the members of the partnership shall number three, then each such party shall appoint one such arbitrator, and the award of a majority of such arbitrators shall be binding and conclusive upon the parties hereto; but, if the members of the partnership shall be only two in number, then, and in such event, each of such two parties shall appoint one such arbitrator, and the two so chosen shall, thereupon, select the third arbitrator; and the award of a majority of such arbitrators shall be binding and conclusive upon the parties hereto.

(b) That the appointment of such arbitrators by the respective parties shall be made by each of said parties within five (5) days after receiving notice from the other, or others, to make such appointment. The failure of any party so to appoint an arbitrator shall authorize the other, or others, to make an appointment for the one so in default; and if, in consequence of the exercise of such power, two arbitrators shall be so appointed, in such event, such two arbitrators shall select a third arbitrator, within five (5) days after their appointment. If such two arbitrators shall fail, or shall be unable, within such time, to select a third arbitrator, or if any two of the parties hereto shall, within five (5) days after the failure of any party to appoint an arbitrator, be unable to agree upon an arbitrator, to act in behalf of any such party so in default, then, and in any such event, any judge of the Supreme Court, New York County, upon application made by any party hereto for that purpose, is hereby authorized and empowered to appoint such additional arbitrator.

(c) The award to be made by the arbitrators hereunder shall be made, within five (5) days after the appointment of the third arbitrator.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

Henry Koe (L.S.).

In the presence of

John Jones.

[Annex Schedule of Assets Contributed by Partners.]

No. 334.

Agreement of limited partnership.³

AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Main Street, Tuxedo, New York (herein called the "First Party"), Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), Henry Koe, residing at No. 57½ Main Street, Syracuse, New York (herein called the "Third Party"), and John Smith, residing at No. 35 Main Street, Bar Harbor, Maine (herein called the "Fourth Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That the parties hereto agree to form, and hereby do form, a limited partnership, pursuant to the provisions of Article IV of the Partnership Law of the State of New York, for the purpose of conducting in New York City a general stock exchange brokerage and commission business in gold, stocks, bonds, and other securities, and in cotton, grain, petroleum, produce and other merchandise.

2. That the First and Second Parties hereto shall be the general partners, and that the Third and Fourth Parties hereto shall be the special partners, in said partnership.

3. That said partnership shall be conducted, under the firm name and style of "Doe & Company."

4. That said partnership shall commence on the 5th day of January, 1923, and shall continue until the first day of January, 1925.

5. (a) That the First Party, as such general partner, shall contribute, as capital to the common stock of the said partnership, at the commencement thereof, the sum of two hundred thousand (\$200,000) dollars in cash, provided, however, that the seat in the New York Stock Exchange, now owned by the said First Party, may, at his option, be held by him for the benefit of the said partnership, and be treated as an asset of the said partnership; and, in that case, the said First Party shall be credited with the market value of the said seat, as of the time of the commencement of the said partnership, on account of his contribution to the common stock of the said partnership. But the First Party may, however,

³ Adapted from *Post v. Thomas* (1917), 220 N. Y. 735, 116 N. E. 1070.

at any time, pay to the partnership in cash the amount so credited to him on the books of the partnership as the value of said seat, and shall, thereafter, hold and dispose of the said seat as his own property absolutely.

(b) That the Second Party, as such general partner, shall contribute, as capital to the common stock of the said partnership, at the commencement thereof, the sum of one hundred thousand (\$100,000) dollars in cash.

(c) That the said Third and Fourth Parties, as such special partners, shall each contribute, as capital to the common stock of the said partnership, at the commencement thereof, the sum of one hundred thousand (\$100,000) dollars in cash.

6. That the profits, which may accrue from the business of the said partnership, after deducting therefrom all of the expenses and outlays, attending the conduct and management of the said business, and all losses that may be sustained therein, shall be divided, as follows:

(a) In each year, wherein the profits of the partnership shall not exceed the sum of seventy-five thousand (\$75,000) dollars, each special partner shall receive a sum equal to six (6%) per cent of the capital contributed by him to the common stock of the partnership.

(b) In each year wherein the profits of the partnership shall exceed the sum of seventy-five thousand (\$75,000) dollars, each special partner shall receive a sum equal to six (6%) per cent of the capital contributed by him, and an additional sum equal to two (2%) per cent of the capital contributed by him for each twenty-five thousand (\$25,000) dollars of profits made by the partnership in said year in excess of the sum of seventy-five thousand (\$75,000) dollars, but not exceeding the sum of one hundred and twenty-five thousand (\$125,000) dollars; and each special partner shall receive a further sum equal to five (5%) per cent of all profits of said partnership, made in any year, in excess of the said sum of one hundred and twenty-five thousand (\$125,000) dollars.

(c) The balance of the profits in each year, after the deduction of the sums so to be paid to the special partners, as aforesaid, shall be divided among the general partners in the proportion of twenty-five (25%) per cent thereof to the said Second Party, and seventy-five (75%) per cent thereof to the said First Party.

(d) The general partners, jointly and severally, guarantee that each special partner shall receive, in each year, during the continuance of the partnership, on account of his share of the profits of said partnership, a sum equal to six (6%) per cent of the amount of his contribution to the common stock of the partnership; and, in case, in any year, either of the special partners shall not receive, on account of the profits of the partnership, a sum equal to such six (6%) per cent of the amount of his said contribution, then the said general partners, jointly and severally, shall pay to each such special partner, at the end of each year, the difference, if any, between the amount of such special partner's share of the profits in the partnership and such six (6%) per cent of the amount of his contribution.

(e) That any losses suffered, or incurred, in and about the business of the partnership, shall be borne by all the parties in the same proportion in which they are entitled, as aforesaid, to share in the profits of the partnership, but neither special partner shall, in any event, be liable for, or subject to, any loss whatsoever, beyond the amount of capital contributed by him, as aforesaid, to the common stock of the partnership, nor shall either special partner be personally liable for any debts, engagements, or losses, of the said partnership, in any event, or to any extent whatsoever.

7. That, upon the termination, or dissolution, of the partnership, a full account of the assets and liabilities of the partnership shall be taken, the assets shall be liquidated as promptly as possible, and the proceeds thereof shall be applied, as follows:

(a) To the payment of the debts and liabilities of the partnership, and the expenses of liquidation.

(b) To the repayment of the capital contributed by the special partners, or such portion thereof as can be paid out of the assets of the partnership then remaining, said special partners sharing equally in case said assets shall not be sufficient to repay such contributions in full.

(c) To the repayment of the capital contributed by the general partners, or such portion thereof as can be paid out of the assets of the partnership then remaining, said general partners sharing *pro rata*, according to the amounts of their original contributions of capital, in case such assets shall not be sufficient to repay such contributions in full.

(d) The surplus, if any, of the said assets remaining, shall be

divided among the partners, according to their respective interests therein, as herein defined.

8. (a) That, at all times, during the continuance of the partnership, the general partners shall keep, or cause to be kept, full and faithful books of account, in which shall be entered, fully, truly, and accurately, each and every transaction of the said partnership; and the said general partners shall cause the said books to be written up and balanced, on or about the first day of January in each year, during the continuance of the said partnership; and a statement thereof shall be mailed to each special partner, and the net profits, if any, of the partnership, after deducting, or allowing for, all of the expenses and outlays theretofore made, or incurred, in the conduct of the business, as well as all losses sustained therein, shall be apportioned, and the share of each partner, in such profits, shall then be placed to his individual credit upon said books.

(b) That all of said books of account shall, at all times, be open to the inspection and examination of the special partners, or their representatives.

9. (a) That each of the general partners hereby covenants and agrees that he will not, during the continuance of the said partnership, either in the name of the partnership, or in his own name, or for his own account, except as a copartner in the partnership, and then only upon such terms as the partnership may require, either solely, or jointly with any other, or others, engage, or be interested, directly or indirectly, in any speculation, or speculations, or in any purchase, or sale, on margin, of any kind whatsoever.

(b) That each general partner hereby covenants and agrees that he will not, during the continuance of the said partnership, in the name of the partnership, make, draw, endorse, accept, or sign, any check, promissory note, draft, bill of exchange, bond, or obligation of any description whatsoever, for the accommodation of any other person, firm or corporation, other than in the regular legitimate business of the partnership.

(c) That each general partner hereby covenants and agrees that he will not, during the continuance of the said partnership, in his own name, endorse any mercantile paper, or become surety, in any way, or form whatsoever, for any other person, firm or corporation.

(d) In case of a violation by any general partner of any of the covenants contained in any of the sub-paragraphs of this article, such general partner shall, if the remaining partners so elect and shall so notify him in writing, cease to be a partner, and his interest in the partnership shall, thereupon, determine and be liquidated, in the manner provided for in article "11" hereof, in the case of the death of a general partner.

10. That each general partner further covenants and agrees to give his whole time and attention to the business of the partnership, and to use his utmost exertion to promote its success, and that he will not, during the continuance of this partnership, engage, or be interested, in any other business whatsoever.

11. (a) In the event of the death of any general partner, during the time fixed for the continuance of this partnership, this partnership shall not be thereby dissolved, but shall be continued by the survivors. The interest of such deceased general partner shall terminate as of the first day of the calendar month next succeeding his death, and the value of the interest of such deceased partner in the partnership shall be determined by the surviving partners, as of such date, from the books of the partnership; and such interest, as so determined, shall be liquidated, and the amount thereof shall be paid to the representatives of such deceased partner, within six months thereafter, with interest at the rate of six (6%) per cent per annum to the date of such payment.

(b) In the event of the death of any special partner, during the time fixed for the continuance of the partnership, the said partnership shall not be thereby dissolved, but shall be continued by the surviving partners, and, except as hereinafter provided, in the case of withdrawal, each special partner covenants and agrees, for himself, his executors and administrators, that the capital contributed by him to the common stock of the partnership may, at the option of the surviving general partner, or partners, be retained in the partnership, upon the same terms in respect of participation in profits, as are above provided for, or may be liquidated and paid off, at any time, after the death of such special partner.

(c) Any partner, general or special, may withdraw from the said partnership, at, or after, the expiration of one year from the commencement thereof, upon giving three (3) months written notice of his intention so to withdraw, addressed to the partnership, and delivered at their place of business, in New York City. Such

withdrawal shall not effect a dissolution of the partnership, but the same shall be continued by the other partners. The interest of the withdrawing partner shall be determined as of the date of retirement, and shall be liquidated as herein provided in the case of death.

(d) That anything to the contrary herein notwithstanding, the partnership may, at the election of a continuing, or surviving, general partner, be terminated, upon the withdrawal, or death, of a general partner, and, in case of such termination, and, in any event, upon the termination of said partnership, a notice of dissolution, as required by the statute, in such case made and provided, shall be filed and published.

12. (a) That, upon the termination of the partnership, or dissolution thereof, for any cause, prior to the death of the First Party, or, in case of the withdrawal of the said First Party, the firm name of "Doe & Company," together with any good-will and business value attaching to the same, shall not be taken into account as a partnership asset, but shall belong to, and be the exclusive property of the said First Party, and no other partner shall have any right thereto or interest therein; and the said First Party may, upon such termination, or dissolution, or withdrawal from, the partnership, dispose of the said name, or continue to use the same, as he may see fit; and each of the other partners hereby specifically waives any right thereto, or interest therein, whether conferred by statute, or otherwise.

(b) That, at the termination, or upon the dissolution, of the partnership, for any cause, prior to the death of the said First Party, the said First Party shall have the right, at his option, forthwith to purchase and take over the interest of any other partner in any of the assets of the partnership, at a fair valuation, to be agreed upon, or, in case of disagreement, to be determined by arbitration.

(c) That, in case of the termination of the said partnership, by the death of the said First Party, or thereafter, from any cause, any good-will attaching to the said firm name of Doe & Company shall be treated as a firm asset, and the surviving partners shall have the right to continue the use of the same.

13. That, if, at any time, during the continuance of the partnership, the parties hereto shall deem it necessary, or expedient, to make any alteration, in any of the articles hereof, or any addition

hereto, for the more advantageous, or satisfactory, management of the partnership business, it may be done, by any writing, under their joint hands, endorsed on these articles, or by the execution of articles supplemental to this agreement, and all of such alterations, amendments and additions shall be adhered to, and have the same effect, as if the same had been originally embodied in, and formed a part of, these presents.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

Henry Koe (L.S.).

John Smith (L.S.).

In the presence of

Richard Brown.

SECTION 2.—MISCELLANY.

No. 335.

Agreement of dissolution of partnership.⁴

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the parties hereto, as partners, are now engaged in the business of merchant tailoring, under the firm name of "Doe & Roe"; and

WHEREAS, the said parties have agreed to dissolve their said partnership:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the aforesaid partnership is hereby dissolved.
2. That the Second Party hereby assigns to the First Party all of his right, title and interest in the business of the said partnership hereby dissolved, and in the moneys in bank, trade-marks, trade-names, accounts due, or to become due, and in all other assets of any kind whatsoever belonging to the said partnership; and, in

⁴ Cf. *Howard v. Pratt* (1900), 110 Ia. 533, 81 N. W. 722; *Elkinton v. Booth* (1887), 143 Mass. 479, 10 N. E. 460; *Von Bremen v. MacMonnies* (1910), 200 N. Y. 41, 93 N. E. 186.

consideration thereof, the First Party shall pay to the Second Party the sum of five thousand (\$5,000) dollars, contemporaneously with the execution of this agreement.

3. That the First Party shall have the sole right to endorse, or otherwise use, the partnership name, in order to transfer, or collect, any checks, or other obligations, for the payment of money.

4. That the Second Party covenants with the First Party, as follows:

(a) That he has not assigned, transferred, pledged, compromised, or released, any debts, or accounts, due to the partnership.

(b) That he has not made, executed, delivered, accepted, or endorsed any commercial paper, in behalf of the partnership.

(c) That he has not incurred any obligation, or liability, contingent, or actual, in behalf of the partnership, except such as may now appear upon the books of the partnership.

5. That the First Party covenants to assume, pay and satisfy, or cause to be paid and satisfied, all debts and other liabilities of the partnership hereby dissolved, except only such debts or liabilities (if any) as may, at any time, or times, have been contracted by the Second Party, in behalf of the partnership, and which have not been entered in, or upon, the partnership books; and the Second Party shall assume, pay and satisfy all of such debts and other liabilities of the partnership hereby dissolved, as have not been herein assumed by the First Party.

6. That the First Party hereby releases the Second Party, and the Second Party hereby releases the First Party, from all accounts, claims and demands relating to the said partnership, and from all causes of action, agreements, matters, or things, arising out of, or contained in, the said agreement of partnership, and from and by reason of any other matter, cause or thing whatsoever, from the beginning of the world up to, and including, the date hereof, but without prejudice to any rights, claims or remedies of the parties hereto under any of the terms, provisions and conditions of this agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of
John Jones.

No. 336.**Clause continuing partnership among surviving partners.⁵**

That, if one of the parties shall die, during the term of the partnership, the survivors shall, upon the terms and conditions hereinbefore set forth, continue as partners for the remainder of the term fixed for the duration of the partnership.

No. 337.**Clause continuing partnership with personal representative of deceased partner.⁶**

Should either partner die, during the term of the partnership, such partnership shall not be deemed dissolved thereupon, but the personal representative of the partner so dying shall immediately succeed to his interest in the partnership, and shall stand in his place with respect to said deceased partner's share and profits in the business of the partnership, during the remainder of the term of the partnership hereby formed, and such personal representative shall have the same rights and powers, and shall be subject to the same duties and liabilities, as the deceased partner would have possessed and would have been subject to, but for his death.

No. 338.**Clause providing one party shall contribute sums in excess of his contribution to the partnership, upon written request of the other party.⁷**

That the First Party shall contribute to the capital of the partnership the sum of ten thousand (\$10,000) dollars, and shall, from time to time, contribute to the capital thereof such additional sums of money, not in excess of the aggregate sum of five thousand (\$5,000) dollars, as the Second Party, in writing, may request; and the First Party shall receive interest, at the rate of six (6%) per cent per annum, upon all sums so contributed by him in excess of the aforementioned sum of ten thousand (\$10,000) dollars.

⁵ Cf. *Collender v. Phelan* (1880), 79 N. Y. 366.

⁶ Cf. *Insley v. Shire* (1895), 54 Kan. 793, 39 Pac. 713, 45 Am. St. Rep. 308; *Wild v. Davenport* (1886), 48 N. J. L. 129, 7 Atl. 295, 57 Am. Rep. 552.

⁷ Cf. *Tutt v. Land* (1873), 50 Ga. 339.

No. 339.

Clause providing for increase of capital of partnership, upon written request of majority.⁸

That, if a majority of the parties shall signify in writing to the other party, or parties, their desire to increase the capital of the partnership, then, and in such event, each party shall, within one week after the said notice shall have been served upon all of the parties, contribute to the capital of the partnership the same proportion of the increase in capital that he contributed to the capital of the partnership, at its commencement.

No. 340.

Clause providing for distribution of securities, upon dissolution of partnership.⁹

That all shares of stock, or other securities, belonging to the partnership shall, upon the dissolution of the partnership, be distributed among the partners in kind, in proportion to their respective interests in the copartnership; and sufficient of such stock, or other securities, shall be sold, to avoid fractional interest in shares, or other securities, and the proceeds realized from any such sale, shall be distributed ratably among the partners.

⁸ Cf. *Livingston v. Lynch* (1820), 4 Johns. Ch. (N.Y.) 573.

⁹ Adapted from *Smith v. Jamison* (1915), 170 App. Div. 78, 157 N. Y. Supp. 507.

CHAPTER XVIII

PLEDGOR AND PLEDGEE

- No. 341—Agreement to loan money, whereunder borrower pledges life insurance policy as collateral security.
- No. 342—Agreement of syndicate managers, pledging with trust company, as depositary, securities as collateral for their collateral trust note.
- No. 343—Agreement whereunder borrower, as security for loans, pledges with lender shares of stock which have already been pledged with others, who join in the agreement, to enable the lender, at his election, to discharge their claims, and to become subrogated to their rights, upon certain conditions.
- No. 344—Agreement whereunder note is deposited with trust company, as collateral security for certificates of participation in the note.
- No. 345—Assignment of account receivable as collateral security.
- No. 346—Assignment of chattel mortgage as collateral security.
- No. 347—Assignment of ground rents as collateral security for loan.
- No. 348—Assignment of life insurance policy as collateral security.
- No. 349—Assignment of moneys due under construction contract as collateral security.
- No. 350—Assignment of mortgage as collateral security.

No. 341.

Agreement to loan money, whereunder borrower pledges life insurance policy as collateral security.¹

AGREEMENT, made January 5, 1923, between John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at

¹ Adapted from *Gould v. Flitmann* (1920), 230 N. Y. 569, 130 N. E. 897.

No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That the First Party agrees to loan to the Second Party, and the Second Party hereby borrows and acknowledges having received from the First Party, the sum of five thousand (\$5,000) dollars.

2. That the Second Party shall repay the amount of said loan, with interest, at the rate of six (6%) per cent per annum, to the First Party at his office, No. 120 Broadway, Borough of Manhattan, New York City, on December 29, 1923.

3. (a) That the Second Party hereby assigns, transfers and sets over to the First Party all of his right, title and interest, including the right to exercise any and all options and privileges, in policy No. B300, on the life of the Second Party, issued by the Doe Life Assurance Society of the United States, together with all moneys that may be payable under the same, as collateral security for the repayment of the said loan.

(b) That, in the event of a default in the payment of said loan, on the date hereinbefore mentioned, the First Party is hereby fully authorized and empowered, without notice to, and without demand for payment by, the Second Party, to cancel said policy and to apply the cash surrender value of such cancellation to the payment of said loan, and any unpaid interest; and, upon the maturity of said policy, either by death, or by lapse of time, the First Party is hereby authorized and empowered to exercise any right, or option, and accept and extend any privilege, or other benefit, held, possessed, or enjoyed, by the Second Party, under the terms and conditions of the said policy, including the right to commute any amount due in installments, whether provided for in the policy, or not; provided, however, that should the surrender value of said policy exceed the amount of said loan and the interest thereon, then, and in that case, the excess value thereof, above the loan and interest, shall be due and payable, upon demand, to the legal owner, or owners of the policy.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of
John Jones.

No. 342.

Agreement of syndicate managers, pledging with trust company, as depositary, securities as collateral for their collateral trust note.²

THIS INDENTURE, made this 2nd day of March, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Borrowers"), parties of the first part, and Koe Trust Company of New York, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 22½ William Street, Borough of Manhattan, New York City (herein called the "Trustee"), party of the second part, WITNESSETH:

WHEREAS, a syndicate has been formed, pursuant to an agreement (herein called the "subscription agreement"), bearing date the 1st day of September, 1922, by the parties of the first part hereto, therein called "Syndicate Managers," as parties of the first part, and the several persons whose names are thereto subscribed, therein and herein called "subscribers," as parties of the second part, for the purpose of acquiring eight hundred thousand (\$800,000) dollars par value of the capital stock, or the voting trust certificates representing the same, of the Smith Syndicate, a corporation, organized under the laws of the State of New Jersey, which has an authorized capital stock of one million (\$1,000,000) dollars, divided into ten thousand (10,000) shares of the par value of one hundred (\$100) dollars each, a copy of which agreement is hereto annexed and marked "Exhibit A"; and

WHEREAS, in and by said subscription agreement, the subscribers transferred to the Borrowers, and the Borrowers now own and hold, two thousand (2,000) shares of the capital stock of said Smith Syndicate, all of which, or voting trust certificates representing the same, are pledged, as hereinafter provided, to secure the obligations issued hereunder; and

WHEREAS, in and by a certain agreement, bearing date the 30th day of September, 1922, made by and between said Smith Syndicate and the Borrowers, therein referred to as the "Syndicate Managers," the Borrowers acquired, by subscription, the remaining

² Adapted from *Wing v. Smith* (1919), 225 N. Y. 657, 121 N. E. 899.

eight thousand (8,000) shares of capital stock of said Smith Syndicate, all of which, or voting trust certificates representing the same, are pledged, as hereinafter provided, to secure the obligations issued hereunder; and

WHEREAS, for the purpose of further securing the holder or holders of obligations hereunder, the Borrowers have deposited all of said stock, pursuant to a voting trust agreement, bearing date the 1st day of October, 1922, and have accepted the voting trust certificates of the Voting Trustees therefor; and

WHEREAS, the Borrowers, for the purpose of discharging their duties as Syndicate Managers, under the agreement above referred to, and hereto annexed, desire to exercise the right and privilege therein conferred and to borrow the sum of eight hundred thousand (\$800,000) dollars; and

WHEREAS, such loan is to be evidenced and secured by the note of the Borrowers of even date herewith, for the principal sum of eight hundred thousand (\$800,000) dollars, payable on the 1st day of March, 1924, with interest thereon, at the rate of six (6%) per cent per annum; and which note is to be in substantially the following form:

Smith Syndicate.

One Year Six Per Cent Collateral Trust Note of John Doe and Richard Roe as Syndicate Managers.

\$800,000.00

New York, March 2, 1923.

On the 1st day of March, 1924, without grace, for value received, we, John Doe and Richard Roe, as Syndicate Managers, under and pursuant to a certain agreement, bearing date the 1st day of September, 1922 (herein called the "Borrowers"), promise to pay to the bearer hereof, at the office of the Koe Trust Company of New York, in the City of New York, the sum of eight hundred thousand (\$800,000) dollars, in United States gold coin of the present standard of weight and fineness, with interest thereon at the rate of six (6%) per cent per annum, payable in like gold coin. Such principal and interest shall be paid without deduction for any tax, or taxes, which the Borrowers may be required to pay, or retain therefrom, under, or by virtue of, any present, or future, law of the United States, or of any state, county or municipality therein.

This note is issued under, and secured by, an agreement of even date herewith between the Borrowers and the Koe Trust Company, to which reference is hereby made for a description of the property and the nature and extent of the security and the rights of the holder hereof under the same, and the terms and conditions upon which this note is issued and secured.

This note shall not be valid for any purpose, unless authenticated by the certificate of said Trust Company.

As Syndicate Managers.

and

WHEREAS, said note shall not be valid for any purpose, unless certified by the Trustee, by its certificate endorsed thereon, in substantially the following form:

The within is the note mentioned in the agreement dated March 2, 1923, between John Doe and Richard Roe, and the undersigned, within referred to.
Koe Trust Company of New York,
Trustee,

By

and

WHEREAS, the Borrowers desire to secure the payment of said note to the holder thereof, by pledging for such payment the subscriptions to said subscription agreement above referred to, and by pledging, as collateral security therefor, ten thousand (10,000) shares of the capital stock of said Smith Syndicate of the par value of one hundred (\$100) dollars per share, or voting trust certificates therefor, being the entire capital stock of said Smith Syndicate:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that, for and in consideration of the premises, and of the purchase of said note by the holder thereof, and of the sum of One (\$1) Dollar, lawful money of the United States to them paid, at at before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure the due payment of the principal and interest of the note issued, or to be issued, as hereinbefore provided, to the persons, firms, or corporations, who, for the time being, shall be the owner, or holder, thereof, and in order to secure the performance of all the covenants and conditions by the Borrowers in said note and in these presents expressed, the Borrowers have bargained, sold, assigned, set over, transferred, pledged, released and confirmed, and by these presents do bargain, sell, assign, set over, transfer, pledge, release and confirm, unto the Koe Trust Company of New York, its successors and assigns forever, all and singular the following described property and rights, to wit:

(a) Ten thousand (10,000) shares of the capital stock of Smith Syndicate, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, of the par value of one hundred (\$100) dollars each, or voting trust certificates therefor;

(b) The Borrowers, under and pursuant to the power and authority delegated to them in the aforesaid syndicate agreement, do

hereby assign, transfer and set over to the said Koe Trust Company, all their right, title and interest in and to the aforesaid subscription agreement, bearing date the 1st day of September, 1922, together with all the liability thereunder of all the subscribers thereto, and all payments to be made by them in pursuance of the terms thereof;

TO HAVE AND TO HOLD, all and singular the property and rights hereinafter and hereby sold, transferred and assigned, and every part and parcel thereof, for the benefit and security of the holder of the note of the Borrowers, issued hereunder and secured hereby, and of all persons who shall, or may, have an interest therein, and for the objects, uses and purposes, and subject to the conditions and terms hereinafter expressed, and the parties hereto covenant and agree to and with each other, as follows:

I. Upon the delivery to it of all of the securities, property and rights hereby transferred and assigned, or intended to be, and upon the execution and delivery of these presents, the Trustee shall, at the request of the Borrowers, certify and deliver to, or upon, the order of the Borrowers a note as herein provided, for an amount not to exceed eight hundred thousand (\$800,000) dollars in aggregate principal amount.

II. Certificates for all the securities to be deposited with the Trustee, as hereinbefore provided, shall be issued in such name, or names, as may be convenient for the Borrowers, and shall be duly endorsed.

III. The Borrowers covenant to pay to the owner of the note hereby secured, or intended to be, the principal and interest mentioned in, and represented by, such note, as and when the same shall become due and payable.

IV. In case the note issued hereunder shall become mutilated, or shall be destroyed, upon the surrender of such mutilated note to the Trustee, or upon the filing with the Trustee of satisfactory evidence of such destruction, the Borrowers, in their discretion, may make, and the Trustee, in its discretion, may certify, a new note in lieu, substitution or exchange for and upon the cancellation of the note so mutilated, or in lieu of the note so destroyed.

V. All moneys paid in upon said subscription agreement, whether paid upon the call of the Borrowers, or otherwise, shall, so long as the note issued hereunder and secured hereby is unpaid and outstanding, be paid to the Trustee, which is hereby authorized

and empowered to receive the same and to give receipts therefor; and the Borrowers covenant and agree that all calls made by them upon the subscriber, so long as these presents shall be in force, shall be in their terms payable to the Trustee, pursuant to the provisions of this section.

VI. If, while these presents shall be in force, any subscriber shall pay to the Trustee the full amount unpaid by him upon his subscription, the Trustee shall, in accordance with the provisions of the paragraphs numbered "II" and "V" of said subscription agreement, transfer and deliver to such subscriber his proportionate share, or shares, of the capital stock of said Smith Syndicate, or the voting trust certificates representing the same, then held by the Trustee hereunder.

VII. All moneys paid to the Trustee, pursuant to the provisions of sections V and VI hereof, shall be held by it as a sinking fund, and shall be applied and distributed by it as hereinafter provided in the case of moneys received by it upon a sale of the pledged securities and rights.

VIII. (a) In the event of default in the payment of the principal sum of the note, or any part thereof, with interest thereon, as the same shall have become due by the terms thereof, or in the event of default in any other thing hereunder required to be kept, or done, by the Borrowers, the Trustee, or its successors in the trust, shall first, by notice in writing, addressed to the Borrowers at their office at No. 11½ Broadway, Borough of Manhattan, New York City, require them to make such call, or calls, under the authority vested in them by the subscription agreement, as shall be necessary to raise an amount sufficient to pay and discharge the principal and interest of the notes issued hereunder and secured hereby and then outstanding; and, in default of such call, or calls, for a period of five (5) days after the service of such notice, the Trustee may, and it is hereby constituted and appointed the agent of the Borrowers for such purpose, in the name of the Borrowers, or otherwise, to make such call, or calls, upon the subscribers under said subscription agreement in the manner and upon the notice therein prescribed, with the same force and effect as if such call had been made by the Borrowers, and the Trustee shall have the same right to receive moneys paid upon such call, or calls, and receipts therefor to give, to enforce payment thereof by suit, or otherwise, and the same rights in the premises to exercise as the Borrowers

might, or could have, and, upon default in the payment of any such call, or calls, by any subscriber, or subscribers, the Trustee may and at the request of the holder, or holders, of the note issued hereunder and secured hereby, or a majority in amount of the persons having an interest therein, and upon being provided with funds therefor, shall pay any such unpaid call, or calls, and the amount of the payment so made by it shall be a first and prior lien upon the property, securities and rights hereby pledged, or intended to be, and the Trustee shall thereupon be clothed with and subrogated to all the rights of the Borrowers to collect every such unpaid call so paid by it, whether by legal action or otherwise.

(b) And, upon default in payment of all, or any part, of such call, or calls, or upon the payment by it of any moneys due upon such call, or calls, upon the date when the same shall be payable, the Trustee, in its discretion, may cause the whole of said stock, or voting trust certificates, hereby conveyed, or intended so to be, or such part thereof as may then remain in its possession unredeemed, and all benefit, or equity of redemption, of the Borrowers, or of the subscribers and their respective successors and assigns, therein, or thereto, to be sold as an entirety, or in such lots as the Trustee, in its absolute discretion, may determine, at public auction in the City of New York, giving at least sixty (60) days' previous notice of the time and place of such sale, by publishing the same at least once in each week, during such period of sixty (60) days, in a newspaper in New York City, and giving written notice of such sale to each subscriber, who shall not then have paid his subscription in full, under the provisions hereinbefore set out, by mailing such notice to such subscriber, at his last known post office address as the same shall appear upon the books of the Trustee, at least twenty (20) days before the date of such sale; and, thereupon, such subscriber may redeem from such proposed sale his proportionate share of such stock, or voting trust certificates, by paying to the Trustee the full amount unpaid upon his subscription, with his proportionate share of the Trustee's reasonable fees and expenses in and about the said proposed sale, at least five days before the date of such sale.

(c) And it shall be lawful for the Trustee, or its successors in this trust, making such sale, and it, and they, are hereby authorized and empowered, as the attorney, or attorneys, of the Borrowers, by these presents duly constituted and appointed for that

purpose, to make, execute and deliver to the purchaser, or purchasers, on such sale all such conveyances as shall be necessary, or proper, to convey and assure to and vest in him, or them, the said stock, or voting trust certificates, and every part and parcel thereof, and all of the estate, right, title and interest of the Borrowers, and of the subscribers, their respective successors and assigns therein or thereto, and such sale and conveyances shall be valid and effectual forever and shall be a perpetual bar, both at law and equity, against the Borrowers and the subscribers, their successors and assigns against all persons claiming, or to claim by, from, or under them, or any of them.

(d) The receipt of the Trustee, or Trustees, who shall make the sale hereinbefore authorized, shall be sufficient discharge to the purchaser, or purchasers, at such sale for his, or their, purchase money, and such purchaser, or purchasers, his, or their, heirs, assigns or personal representatives, shall not, after paying such purchase money and receiving such receipt of such Trustee, or Trustees, therefor, be obligated to see to the application of such purchase money upon, or for, the trusts, or purposes, of these presents, or be in any wise answerable for any loss, misapplication or nonapplication of such purchase money by the Trustee, or Trustees.

IX. The Trustee, or its successors in the said trust, shall, out of the proceeds of such sale, or of any sale, which shall under judicial proceedings, or otherwise, be made of the said property, in enforcement of the security afforded by these presents, or of such call, or calls, upon the subscribers as hereinbefore provided, or both, in the first place, pay and retain the costs and expenses attending such sale, and all counsel fees and other expenses incurred by it, or them, in reference to the same, and a reasonable compensation for its, or their, own service in the premises, and also, any balance, which may be due to it, or them, on account of any disbursements, or expenses, paid, or incurred, in, or about, the care, management or control of the said property, subsequent to the taking possession thereof by it, or them, including the reasonable compensation of any agent, or agents, who may be employed in, or about, such care and management, and shall apply the residue of the proceeds of such sale out of such calls, or so much thereof as may be necessary, to the payment of the whole amount of principal, which shall then be unpaid upon the said note, whether the

said principal, by the tenor of said note, be then due, or yet to become due, and of the interest which, at that time, shall have accrued on said principal and be unpaid; and any surplus which may remain, after the full payment as aforesaid of the principal and interest of the said note, shall be paid over to the Borrowers, their successors or assigns, upon lawful demand being made therefor, or to such person as may then be entitled to receive the same.

X. (a) Instead of selling the aforesaid described property and securities, after notice of advertisement as hereinbefore authorized by paragraph VIII hereof, the Trustee, or its successors, in the event of default in the payment of said note as aforesaid, and the continuance of such default as aforesaid, may proceed, by a suit, or suits, in equity, or at law, as the said Trustee may be advised by counsel, to enforce payment of said note and to enforce the obligations of these presents, and sell the property and securities hereby covered under the judgment, or decree of, some court of competent jurisdiction.

(b) The right of sale and the right to make calls upon the subscribers hereinbefore granted are intended as cumulative remedies, and shall not be deemed to deprive the said Trustee, or the beneficiaries under this trust, acting through said Trustee, of any legal, or equitable, remedy, by judicial proceedings appropriate to enforce the provisions of this instrument; but the holder, or holders, of said note, or of any right or interest therein, shall not take any legal proceedings to enforce the provisions hereof, until after he, or they, shall have requested the Trustee, in writing, to take proceedings to enforce the obligations of these presents by action, or otherwise, and shall have furnished to it proper indemnity, and said Trustee, upon such demand, shall have refused, or neglected, to take such proceeding, or proceedings.

XI. The Borrowers do hereby covenant and agree to and with the Trustee and its successors in the trust hereby created, that, until default, they shall and will, from time to time, pay and discharge all taxes, assessments and government charges lawfully imposed upon the property and securities hereby pledged, or transferred, or upon any part thereof, the liens of which might, or could, be held prior to the lien of these presents, so that the priority of these presents may be duly preserved, and that they shall not and will not do, or suffer, any matter, or thing whatsoever, whereby the lien of these presents might, or could, be impaired, until the

note hereby secured, together with all interest accrued thereon, shall be fully paid and satisfied.

XII. The Borrowers hereby covenant and agree to and with the Trustee, and its successors in the trust, and to and with the respective persons and corporations, who shall, at any time, become the holder, or holders, of the note hereby secured, or the owner of any interest therein, or any of them, that they, their successors and assigns, shall and will, at any time, and from time to time hereafter, upon request, make, do, execute and deliver all such further and other acts, deeds and things as shall be reasonably advised, devised or required, to effectuate the intention of these presents, and to assure and confirm to the Trustee, or its successors in this trust, all and singular the aforesaid property, securities and rights hereinbefore described and hereby intended to be conveyed, so as to render the same, and such portions thereof, whether now owned or hereafter acquired, subject to the lien hereof, and available for the security and satisfaction of said note, according to the true intent and purposes herein expressed.

XIII. (a) The Trustee, under this indenture, may resign the said trust, upon sixty (60) days' written notice to the Borrowers, or upon such shorter notice as may be acceptable to them; and any vacancy in the office of Trustee, whether so created, or arising from insolvency, incapacity or any other cause, may be filled by the appointment of one or more competent persons, or a corporation, as new Trustees, or as new Trustee, by an instrument, or concurrent instruments in writing, executed under the hands and seals of the holder or holders of the note issued hereunder and secured hereby, or of the owners of a majority in interest therein, or their attorneys in fact, thereunto authorized in writing, and that an appointment, so made, shall supersede and take precedence of any appointment made in any other way whatsoever.

(b) In case, after notice of such vacancy and of the right of the holder, or holders, of said note to fill the same shall have been published in two newspapers of general circulation in New York City, once a week for sixty (60) days, such holder, or holders, shall fail to fill such vacancy, by an appointment made as hereinbefore prescribed, then the Board of Directors of the Trustee shall make a temporary appointment to fill such vacancy, which shall continue, until the holder, or holders, of said note, or a majority in interest therein, as aforesaid, or their attorneys in fact,

thereunto authorized, shall designate a new Trustee, or Trustees, to act hereunder.

(c) Any new Trustee, or Trustees, hereunder shall, upon their, his, or its, appointment, and without any further act, deed or conveyance, become and be vested with the possession of the property and securities hereby pledged and assigned, and intended so to be, and all other property and securities then held by the Trustee hereunder, and all of the estates, trusts, rights, powers and duties of the Trustee in whose place he, they, or it shall have been appointed; but, nevertheless, the respective parties thereto, and their respective successors and assigns, shall, and will, upon request, make, execute and deliver all such releases, conveyances, and assurances as shall be appropriate, to vest in and confirm and assure to such new Trustee, or Trustees, all such estates, trusts, rights, powers and duties, according to the intent above expressed.

XIV. It shall be no part of the duty of the Trustee to file, or record, this indenture as a chattel mortgage, or to file, or renew, the same, or procure any further, other, or additional, instrument to further assure, or do any other act for the continuance of the lien of this indenture, or to give notice of the existence of the lien thereof, or to extend, or supplement, the lien to be created hereby, nor shall it be any part of the duty of the Trustee, either to keep itself informed, or advised, as to the payment of any taxes, or assessments, that may be imposed upon the property affected by these presents, or to require the payment of such taxes, or assessments, that may be imposed upon the property affected by these presents; but the Trustee may, in its discretion, at the expense of the Borrowers, do any and all of the matters and things in this article set forth, or require the same to be done.

XV. If the note issued hereunder, with interest thereon, shall be well and truly paid, according to the tenor and effect thereof, or if the Borrowers shall deposit with the Trustee the amount due upon said note, at the maturity thereof, then, upon the payment, also, of its reasonable charges and expenses, the Trustee shall cancel and surrender this indenture and shall transfer and deliver to the Borrowers, or upon their order, all securities and rights, at the time deposited, or assigned, hereunder.

XVI. The Trustee, for itself and its successors or successor, hereby accepts the trust and assumes the duties herein created and

imposed, upon, and only upon, the following terms and conditions, to wit:

(a) The recitals of fact in this indenture, and in the note hereby secured, are to be taken as statements by the Borrowers and shall not be construed as made by the Trustee.

(b) The Trustee may select and employ, in and about its said trust and duties, agents and attorneys and counsel, whose reasonable compensation shall be paid to the Trustee by the Borrowers, or, in default of such payment, shall be a charge upon the property hereby mortgaged and its proceeds, paramount to said note; and the Trustee shall not be responsible for the application of the proceeds of the note certified by it hereunder, or any part of the proceeds thereof, and shall not be liable for any neglect, omission, or other wrongdoing, of the Borrowers, or of the agents, attorneys or counsel of said Trustee, if reasonable care has been exercised in his, or their, selection; nor shall it be otherwise answerable for anything whatsoever in connection with the trust created by these presents, save for its own wilful misconduct or gross negligence, anything in this indenture, or the note issued hereunder, to the contrary notwithstanding.

(c) The Trustee shall be under no obligation, or duty, to perform any act hereunder, or to defend any suit in respect hereof, unless fully indemnified to its satisfaction. Nor shall the Trustee be bound to recognize any person as the holder of the note issued hereunder, or as a person interested therein, until his title thereto is satisfactorily established, if disputed.

(d) The exclusive right of action hereunder shall be vested in the Trustee, until the refusal of the Trustee so to act, but neither the holder, or holders, of said note, nor any person interested therein, shall have the right to enforce these presents, until after demand upon the Trustee, accompanied by a tender of indemnity satisfactory to it as aforesaid, and a refusal by the Trustee to act in accordance with such demand.

XVIII. The state of the execution, delivery and performance of these presents, and of said note, shall be deemed to be the State of New York, according to the laws of which state this contract and said note shall be construed and the rights of the parties hereunder be determined.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals, and the Trustee, the party of

the second part, has caused these presents to be subscribed in its corporate name by its President, thereunto duly authorized, and its corporate seal to be hereunto affixed, attested by its Secretary, as of the day and year first above written.

John Doe (L.S.),
Richard Roe (L.S.)
As Syndicate Managers.
Koe Trust Company of New York,
By Henry Koe,
President.

(Seal)

Attest:

John Brown,
Secretary.

[Annex Copy of Subscription Agreement.]

No. 343.

Agreement whereunder borrower, as security for loans, pledges with lender shares of stock which have already been pledged with others, who join in the agreement, to enable the lender, at its election, to discharge their claims, and to become subrogated to their rights, upon certain conditions.³

THIS AGREEMENT, made January 5, 1923, by John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Pledgor"), Roe Manufacturing Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal place of business at No. 23½ William Street, Borough of Manhattan, New York City (herein called the "Pledgee"), Henry Koe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Third Party"), Richard Roe, residing at No. 57½ Broadway, Borough of Manhattan, New York City (herein called the "Fourth Party"), and William Kent, residing at No. 25½ William Street, Borough of Manhattan, New York City (herein called the "Fifth Party"), WITNESSETH:

WHEREAS, there is due and payable from the Pledgor to the

³ Cf. *Huntington v. Sherman* (1890), 60 Conn. 463, 22 Atl. 769; *Danforth v. Denny* (1852), 25 N. H. 155; *Van Blarcom v. Broadway Bank* (1868), 37 N. Y. 540.

Pledgee the principal sum of twenty-five thousand (\$25,000) dollars, with interest at the rate of six (6%) per cent per annum on fifteen thousand (\$15,000) dollars thereof, from January 2, 1921, and with interest at the rate of six per cent per annum on ten thousand (\$10,000) dollars thereof from January 3, 1922; and

WHEREAS, the Pledgor is the owner of three hundred and seventy-five (375) shares of common stock (par value \$100 each) of Doe Company, Inc., a corporation, duly organized under the laws of the State of New York; and

WHEREAS, the Pledgor's shares of common stock are held and pledged, as follows:

(a) One hundred (100) shares thereof are pledged to the Third Party, to secure him against liability as endorser upon a note for the principal sum of five thousand (\$5,000) dollars, with interest at the rate of six (6%) per cent per annum, made by the Pledgor, to the order of John Jones, and endorsed, before the delivery thereof, by the said Third Party; and

(b) Two hundred and seventy-five (275) shares thereof are pledged to the Fourth Party, for moneys advanced to, or for, the Pledgor, amounting in the aggregate to the sum of ten thousand (\$10,000) dollars, with interest thereon at the rate of six (6%) per cent per annum from January 5, 1922, upon a contract of the Pledgor to purchase certain lands in the Dominion of Canada; and

WHEREAS, the Pledgor desires the Pledgee to defer action for the collection of his said indebtedness to it, and the Pledgee is willing to do so, upon the terms hereinafter mentioned:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the Pledgor hereby assigns, transfers and sets over to the Pledgee, its successors and assigns, all of his right, title and interest in and to said three hundred and seventy-five shares of common stock of Doe Company, Inc., represented by the following certificates:

No. 12 for 100 shares

No. 13 for 150 shares

No. 18 for 75 shares

No. 65 for 20 shares

No. 73 for 30 shares

(which said shares of common stock are pledged to and held by the said Third and Fourth Parties, as hereinbefore stated, and which said certificates now stand in the name of the Pledgor, and have

been endorsed by him in blank), and in and to all dividends, incomes, and issues therefrom, and all rights of pre-emption, or other rights thereto attached.

TO HAVE AND TO HOLD such shares of common stock, dividends, income, issues, and rights, to said Pledgee, its successors and assigns, to its and their own use and behoof forever, but subject, nevertheless, as follows:

(a) To the rights of the said Third Party as pledgee of said one hundred (100) shares of said common stock, for the purposes above stated;

(b) To the rights of said Fourth Party, as pledgee of said two hundred and seventy-five (275) shares of common stock, for the purposes above stated;

(c) To the existing rights, if any, of Jane Doe and Catherine Doe, or either of them, which they, or either of them, may secure, obtain, or be adjudged to possess, as the result of the determination of two suits brought by them separately against the Pledgor, and which now are pending undetermined in the Supreme Court, New York County;

(d) To the claim of the Fifth Party, and any other person, who may, for the time being, be the Pledgor's attorney, for legal services rendered to the said Pledgor, in the two suits above mentioned, and for the necessary expenses for defending said suits; it being agreed that if, in the opinion of the said Fifth Party, or any other person who may, for the time being, be the Pledgor's attorney, as aforesaid, the Pledgor shall become in need of funds for the defense of said suits, and shall be without means of raising said funds, save from a sale, or pledge, of the aforesaid shares of common stock, and if the said Pledgor shall be able to free any of the said shares of common stock from any restraints imposed in either of said suits, or from the liens of any attachments granted in either of said suits, to which they may be subject, by obtaining from the Supreme Court, New York County, a modification of any such restraint, or attachment, therein, and, further, shall be able to free said stock from the liens of the said Third and Fourth Parties, as pledgees, or to obtain their written consent to a sale, or pledge, of part thereof, for such purposes, then the Pledgor may, upon application to the Pledgee, accompanying said application with an itemized statement of the expenses, which the Pledgor considers necessary to incur, and upon obtaining the assent and approval of the Pledgee

to such statement of expenses, sell as many of his said shares of common stock as may be necessary to raise the funds required for the defense of said suits, or the Pledgor may borrow the amount of such funds upon the security of said shares of common stock, and apply such funds to the payment of such expenses.

2. The foregoing assignment is made for the purpose of securing the Pledgee upon its said claim of twenty-five thousand (\$25,000) dollars, and interest; and, upon the payment in full of said claim, with interest, the Pledgee shall release to the Pledgor all of its rights hereunder, and shall transfer and deliver to the Pledgor any certificates for such shares of common stock, which may have been transferred, or delivered, to it, in accordance with any of the provisions of this agreement.

3. The Pledgor hereby constitutes and appoints the Pledgee his attorney, for the purpose of transferring said shares of common stock upon the books of Doe Company, Inc., with full power of substitution in the premises, if and when the Pledgee shall acquire possession of said shares of common stock, or any of them.

4. The Pledgor agrees that, if his said indebtedness to the Pledgee, and the interest thereon, shall not be paid within sixty (60) days from the conclusion of said suits, now pending in the Supreme Court, New York County, so far as they affect any of said shares of common stock, by the entry of final judgment (and a disposal of any appeals therefrom) in said suits, dissolving all injunctions, or attachments, against the Pledgor disposing of said shares of common stock, or applying to the claims of the plaintiffs in such suits a part, but not all, of the proceeds, or value, of said shares of common stock, so as to leave a part thereof available for the payment of the Pledgee's claim, the Pledgee, its successors and assigns, shall have the following rights, all, or any, of which it, or they, may exercise, at its, or their, option, at any time thereafter:

(a) To pay the said note upon which the said Third Party is endorser, or to deposit with, or for, the said Third Party a sum of money, or otherwise secure him to his satisfaction, against his liability as endorser thereon; and, upon such payment, deposit, or giving of security, to be, and become subrogated to all the right, title and interest of the said Third Party, his representatives and assigns, in and to said shares of common stock, dividends, income, issues and rights, in addition to the rights herein granted to the Pledgee, its successors and assigns.

(b) To pay the said Fourth Party the sum of ten thousand (\$10,000) dollars, with interest thereon at the rate of six (6%) per cent per annum, for the moneys advanced to, or for, the Pledgor, upon the contract of the Pledgor to purchase divers lands in the dominion of Canada; and, upon such payment, to become and be subrogated to all of the right, title and interest of the said Fourth Party, his representatives and assigns, in and to such shares of common stock, dividends, income, issues and rights, in addition to the rights herein granted to the Pledgee, its successors and assigns.

(c) To pay the claim for legal fees and necessary expenses of said Fifth Party, or of such other person who may be the attorney, for the time being, of the Pledgor in the aforesaid suits and, upon such payment, to be and become subrogated to all of the right, title and interest of said Fifth Party, or of such other person, who may, for the time being, be such attorney of the Pledgor, his and their representatives and assigns, in and to said shares of common stock, dividends, income, issues and rights, in addition to the rights herein granted to the Pledgee, its successors and assigns.

(d) To pay to the person, or persons, to whom any of said shares of common stock may be pledged by the Pledgor, to secure a loan negotiated for the purpose of providing funds for the defense of said suits, as above provided, the amount of his, or their, claim, or claims, and, upon such payment, to be and become subrogated to all of the right, title and interest of such person, or persons, his and their representatives and assigns, in and to said shares of common stock, dividends, income, issues and rights, in addition to the rights herein granted to the Pledgee, its successors and assigns.

(e) Upon giving ten (10) days' notice by registered mail to the Pledgor, at No. 11½ Broadway, Borough of Manhattan, New York City, to sell such of said shares of common stock as may then be in its, or their, possession, either at public, or private, sale, in the Borough of Manhattan, New York City, and to adjourn any sale, or sales, thereof, without further notice, and, at any such sale, or sales, thereof, to be the purchaser of such shares, or any of them, and to apply the proceeds of any such sales, or sale, as follows:

(1) To pay all of the expenses of such sale, or sales, including reasonable legal expenses incurred in connection therewith;

(2) To pay the principal and interest of any indebtedness, which the Pledgor may then owe to the Pledgee; and

(3) To pay to the Pledgor, his representatives or assigns, any balance remaining.

5. The Pledgor agrees to notify the Pledgee promptly, by registered mail, addressed to the Pledgee at No. 23½ William Street, Borough of Manhattan, New York City, of the entry of the final judgments in the above described suits, and of the taking and disposal of any appeals therefrom.

6. The Pledgee agrees not to commence, or prosecute, any action at law, or in equity, on account of the said indebtedness of the Pledgor to it, before the expiration of sixty (60) days from the conclusion of said suits, so far as they affect any of said shares of common stock, by the entry of final judgments as aforesaid, and the disposal of any appeals therefrom.

7. If, at any time, after the expiration of sixty (60) days from the conclusion of said suits, so far as they affect any of said shares of common stock, by the entry of any judgment, as aforesaid, and the disposal of any appeals therefrom, the said note upon which the said Third Party is endorser shall remain unpaid, and said Third Party shall remain liable thereon as endorser, or if, at any such time, there shall remain unpaid to the said Fourth Party the sums advanced by the said Fourth Party to, or for, the Pledgor, amounting in the aggregate to the sum of ten thousand (\$10,000) dollars, with interest thereon at six per cent, upon a contract of the Pledgor to purchase divers lands in the Dominion of Canada, then

(a) The said Third Party agrees that, at any such time, the Pledgee, its successors and assigns, may pay the said John Jones the amount of said note, with interest at the rate of six (6%) per cent per annum, or, at its option, the payment of said amount, with such interest, to the Third Party, at such time, will be accepted by such Third Party as a payment and discharge of his liability on said note; or, at its option, at any such time, the Pledgee, its successors and assigns, may give the said Third Party security against his liability as endorser on said note, sufficient, in his opinion, to secure him against such liability; and, in the event of the discharge, or securing, by the Pledgee, its successors and assigns, as aforesaid, of all liability of the said Third Party, upon said note, the said Third Party agrees to do all acts, within his power, that may be necessary to subrogate the Pledgee, its successors and assigns, to all of his right, title and interest, as a pledgee of the said shares of common stock, and will transfer and deliver to the Pledgee, its successors

and assigns, under the terms of this instrument, the said shares of common stock, and the certificate, or certificates, representing them, and any dividends, income and issues therefrom, and any rights of pre-emption or other rights attached thereto, not used in, or towards, the payment of said Third Party's liability as endorser upon said note; and

(b) The said Fourth Party agrees that, at any such time, the Pledgee, its successors and assigns, may pay the said Fourth Party the said sum of ten thousand (\$10,000) dollars, with interest at six (6%) per cent per annum; and, in the event of such payment by the Pledgee, its successors and assigns, the said Fourth Party agrees to do all acts within his power that may be necessary to subrogate the Pledgee, its successors and assigns, to all of his right, title and interest, as a pledgee of the said shares of common stock, and will transfer and deliver to the Pledgee, its successors and assigns, under the terms of this instrument, the said shares of common stock, and the certificate, and certificates, representing them, and any dividends, income and issues therefrom, and any rights of pre-emption, or other rights, attached thereto, not used in, or towards, the payment of the said Fourth Party's claim against the Pledgor.

(c) Nothing herein contained shall be construed as imposing any duty upon the Pledgor, or any of the other parties hereto, in violation of any injunctions, or attachments, issued in the two suits aforesaid.

8. The Fifth Party agrees that, at any time within sixty (60) days from the conclusion of said suits, by the entry of any judgment, and the disposal of any appeals therefrom, if his said claim for legal fees and necessary expenditures in connection therewith shall remain unpaid, the Pledgee, its successors and assigns, may pay the amount of his said claim, and the payment of said claim, at any such time, will be accepted by him as a payment and discharge of the liability of the Pledgor to him, and, in the event of such payment, the said Fifth Party agrees to do all acts within his power that may be necessary to subrogate the Pledgee, its successors and assigns, to all rights and interest in and to any of said shares of common stock, and will release the same to the Pledgee, and will deliver to the Pledgee, its successors and assigns, any of the said shares of common stock, and any certificate, or certificates, representing them, which may be in, or coming to, his possession, and

any dividends, income and issues therefrom, and any rights of pre-emption and other rights attached thereto, not used in, or towards, the payment of the Pledgor's indebtedness to him as aforesaid.

9. The said Third, Fourth and Fifth Parties further agree, each for himself, and not for the other, or others, that, until their said claims shall have been paid in full (and, in the case of the Third Party, until his said liability as endorser shall have been discharged, or sufficient^{ly} secured), and until said shares of common stock, and the certificates representing them, shall have been transferred and delivered to the Pledgee, as aforesaid, that they will not dispossess themselves of the said shares of common stock, or the certificates representing them, or do anything which might disable them from making the transfer and delivery as aforesaid, upon the payment and discharge of their said claims (and, in the case of the Third Party, upon the discharge, or securing, of his liability as endorser), except in so far as may be necessary to protect themselves in respect of their said claims, by enforcing their rights as pledgees of said shares of common stock, by sale, or other disposal thereof, and, in such case, the Third, Fourth and Fifth Parties agree that, before taking any action to sell, or otherwise dispose of, said shares of common stock, or the certificates representing them, they will give the Pledgee not less than ten (10) days' notice in writing, by registered mail, addressed to the Pledgee at No. 23½ William Street, of their intentions, and will name a national bank, or trust company, in the Borough of Manhattan, City of New York, through which the Pledgee, if it so desires, may pay said claims (and, in the case of the Third Party, deliver such security as will sufficiently secure the said Third Party from his said liability as endorser), and will make delivery and transfer of said shares of common stock, and the certificates representing them, as above provided.

10. The Pledgor agrees that, if for the purpose of raising funds for the defense of the two suits above referred to, he shall borrow money in the manner above provided, upon the security of some of said shares of common stock, he will cause to be inserted in the agreement evidencing the pledge of said shares of common stock to secure said loan, a stipulation similar to that above set forth, to the general effect that the said Pledgee, its successors and assigns, may, at its, or their, option, have the right to pay off the said loan, at any time after the expiration of the sixty (60) days above referred to, and that payment by the Pledgee, its successors and assigns, will be

accepted as a payment and discharge of the liability of the Pledgor upon said loan, and that the lender, in the event of such payment, will do all acts within his power necessary to subrogate the Pledgee, its successors and assigns, to all of his right, title and interest in such shares of common stock, and will transfer and deliver to the Pledgee, its successors and assigns, the said shares of common stock, dividends, income, issues and rights, and, until said loan shall have been paid in full, will not dispossess himself of said shares of common stock, or the certificates representing them, or do anything which might disable him from making the delivery and transfer aforesaid, upon the payment of said loan, except in so far as may be necessary to protect himself by enforcing his right as pledgee of said shares of common stock, by sale, or other disposal, thereof, and that, in such case, before taking any action to sell, or otherwise dispose of, said shares of common stock, or the certificates representing the same, he will give the notice above provided, and name a bank, or trust company, as above provided.

IN WITNESS WHEREOF, the Pledgee has signed this instrument, by its President, thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary, and each of the other parties hereto has hereunto set his hand and seal, the day and year first above written.

Roe Manufacturing Co., Inc.,
By Henry White,
President.

(Seal)

Attest:

John Dix,
Secretary.

John Doe (L.S.).
Richard Roe (L.S.).
Henry Koe (L.S.).
William Kent (L.S.).

In the presence of
Charles Green.

No. 344.

Agreement, whereunder note is deposited with trust company, as collateral security for certificates of participation in the note.⁴

THIS AGREEMENT, made this 2nd day of March, 1923, between Smith Syndicate, a corporation, duly organized under the laws of the State of New Jersey, and having its principal office at No. 11½ Broad Street, Newark, New Jersey (herein called the "Depositor"), party of the first part, and Koe Trust Company of New York, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 22½ William Street, Borough of Manhattan, New York City (herein called the "Depository"), party of the second part, WITNESSETH:

WHEREAS, John Doe and Richard Roe (as Syndicate Managers under a certain agreement made between them, as parties of the first part, and the several persons, whose names are thereunto subscribed, therein called the Subscribers, as parties of the second part, bearing date the 1st day of September, 1922), have made and entered into an agreement with the Koe Trust Company of New York, as Trustee, bearing date the 2nd day of March, 1923, to secure the principal and interest of a note made by said John Doe and said Richard Roe, as such Syndicate Managers, for the principal sum of eight hundred thousand (\$800,000) dollars, issued thereunder and secured thereby, which said note is, as follows:

Smith Syndicate.

One Year Six Per Cent Collateral Trust Note of John Doe and Richard Roe as Syndicate Managers.

\$800,000.00

New York, March 2, 1923.

On the 1st day of March, 1924, without grace, for value received, we, John Doe and Richard Roe, as Syndicate Managers, under and pursuant to a certain agreement bearing date the 1st day of September, 1922 (herein called the "Borrowers"), promise to pay to the bearer hereof, at the office of the Koe Trust Company of New York, in the City of New York, the sum of eight hundred thousand (\$800,000) dollars in United States gold coin of the present standard of weight and fineness, with interest thereon at the rate of six (6%) per cent per annum, payable in like gold coin. Such principal and interest shall be paid without deduction for any tax or taxes which the Borrowers may be required to pay or retain therefrom under or

⁴ Adapted from *Wing v. Smith* (1919), 225 N. Y. 657, 121 N. E. 899.

by virtue of any present or future law of the United States, or of any state, county or municipality therein.

This note is issued under and secured by an agreement of even date herewith between the Borrowers and the Koe Trust Company, to which reference is hereby made for a description of the property and the nature and extent of the security and the rights of the holder hereof under the same, and the terms and conditions upon which this note is issued and secured.

This note shall not be valid for any purpose unless authenticated by the certificate of said Trust Company.

John Doe and Richard Roe, as
Syndicate Managers.

and is authenticated by the certificate of the Trustee endorsed thereon in substantially the following form:

The within note is the note mentioned in the agreement dated March 2, 1923, between John Doe and Richard Roe, and the undersigned within referred to.

Koe Trust Company of New York,
Trustee,
by Henry Koe,
President.

and

WHEREAS, the Depositor hereto has purchased and is the owner of said note; and

WHEREAS, the Depositor desires to interest other persons, firms and corporations in the said note and to secure their participation therein, and for that purpose desires to deposit said note with the Depository, and to have issued against the same participation certificates, signed by the Depository, as Depository, and transferable only upon the books of the Depository by the registered holder thereof, or his duly authorized attorney; and

WHEREAS, such participation certificates are to be in substantially the following form:

\$.....

No.....

Certificate of Participation in the One Year Six Per Cent Collateral Trust Note of John Doe and Richard Roe, as Syndicate Managers.

This is to certify that..... is entitled to participate in the sum of..... in a certain note made by John Doe and Richard Roe, as Syndicate Managers, bearing date the 2nd day of March, 1923, for the principal sum of eight hundred thousand (\$800,000) dollars, payable with interest thereon at six (6%) per cent on the 1st day of March, 1924, which note is issued and secured under and by a certain indenture of trust, bearing even date herewith and therein referred to, made between said John Doe and Richard Roe, as Syndicate Managers, and Koe Trust Company of New York, as Trustee, and the holder hereof is

entitled to the benefits and the collateral pledged as security for said note and of the provisions of said indenture as provided therein.

This note has been deposited with the undersigned, as Depositary, under and pursuant to the terms of an agreement between Smith Syndicate, a corporation of the State of New Jersey, as the owner and holder thereof, and the undersigned, Koe Trust Company of New York, as Depositary, bearing date the 2nd day of March, 1923, pursuant to the provisions of which agreement this certificate is made and issued.

This certificate is transferable only upon the books of the Depositary by the holder hereof in person, or by duly authorized attorney, upon the surrender hereof properly endorsed.

IN WITNESS WHEREOF, Koe Trust Company of New York, as Depositary, has caused this certificate to be signed by its vice-president, and its corporate seal to be hereunto affixed, attested by its secretary, this..... day of....., 1923.

Koe Trust Company of New York,
Depositary.

Attest:

By.....
Vice-President.

Secretary.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that, for and in consideration of the premises, and of the purchase of said participation certificate by the holder thereof, and the sum of one (\$1) dollar, lawful money of the United States, to the Depositary paid, at, or before, the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, and, in order to secure the interest and rights of all the holders of such participation certificates equally and ratably, without preference, or priority, of one over the other, by reason of priority in issuance, or in negotiation, of such certificates, or otherwise, the Smith Syndicate has sold, assigned, transferred, set over and deposited, and by these presents doth sell, assign, transfer, set over and deposit to and with the Koe Trust Company of New York, the certain note of John Doe and Richard Roe, as Syndicate Managers, bearing date the 2nd day of March, 1923, for the principal sum of eight hundred thousand (\$800,000) dollars, payable with interest thereon at six (6%) per cent per annum on the 1st day of March, 1924, issued under and secured by a certain indenture, bearing even date herewith, made and executed by and between said John Doe and Richard Roe and Koe Trust Company of New York, together with all the right, title and interest of said Smith Syndicate in and to said note.

TO HAVE AND TO HOLD said note, for the equal and proportionate benefit and security of all the holders of participation certificates issued hereunder and secured hereby, without preference, or priority, of one certificate over another, by reason of priority in time of

issue, or negotiation, or otherwise, and for the objects, uses, purposes and subject to the conditions and terms hereinafter expressed; and the parties hereto covenant and agree to and with each other, as follows:

I. Upon the execution and delivery of these presents and upon deposit with the Depositary of said note, properly endorsed, the Depositary shall, from time to time, at the request of the Depositor, made in writing and signed by its President, or Vice-President, and its Secretary, Assistant-Secretary, or Treasurer, under its corporate seal, make, issue and deliver to, or upon, the order of the Depositor, certificates of participation in said note, as hereinbefore provided, in the amount specified in said request, but not to exceed in the aggregate, at any one time outstanding, the face amount of said note, upon payment to it of a sum equal to six (6%) per cent of the face amount of such certificates issued, which said sum equal to six (6%) per cent shall be applicable exclusively to the payment of interest on such certificates.

II. The participation certificates issued hereunder shall be transferable only upon the books of the Depositary by the registered holder thereof in person, or by duly authorized attorney, upon the surrender thereof, properly endorsed, and the Depositary may deem and treat the person in whose name any certificate shall be issued, or registered upon the book for registration thereof, as the absolute owner thereof, for the purpose of receiving payment for, or on account of, the principal, or interest, thereof, and for all other purposes, and all such payments, so made to any such registered holder for the time being, or upon his order, shall be valid and effectual, to satisfy and discharge the liability upon such certificate, to the extent of the sum, or sums, so paid.

III. All moneys paid to the Trustee, under the indenture made by said John Doe and Richard Roe and bearing date the 2nd day of March, 1923, and pursuant to section I hereof, shall be held by such Trustee, and used and disposed of by it, under and pursuant to the terms of said indenture, for the protection and security of the holder, or holders, of participation certificates issued hereunder.

IV. The Depositary shall collect and receive all moneys due, or to become due, upon said note, at the maturity thereof, and whenever the same shall become due and payable by the terms thereof, or by the terms of the indenture under and by which it is issued

and secured, and the Depositor hereby constitutes and appoints the Depositary its true and lawful agent to collect and receive all such moneys and due acquittances therefor to give. All moneys so collected and received by the Depositary shall be applied by it as follows:

1. The Depositary shall, in the first place, pay and retain the costs and expenses attending such collection and all counsel fees and other expenses incurred by it, in reference to the same, and a reasonable compensation for its own services in the premises, and any balance, which may be due it, on account of any reasonable disbursements, or expenses, paid in, or about, its duties hereunder.

2. The Depositary shall apply the residue of the proceeds of such collection to the payment of the principal of the participation certificates issued hereunder and of the interest, which shall have accrued thereon, and, in case of a deficiency of such proceeds to pay in full the whole amount of principal and interest owing upon said certificates, the same shall be paid ratably in proportion to the amount owing and unpaid upon said certificates, respectively, without discrimination as between principal and interest and without preference of the whole, or any one, certificate over any of the others.

V. The Depositor hereby covenants and agrees to and with the Depositary and its successors in this trust, and to and with the respective persons and corporations, who shall, at any time, become holders of the certificates issued hereunder, or any of them, that it, its successors and assigns shall and will, at any time, and from time to time hereafter, upon request, make, do, execute and deliver all such further and other acts, deeds and things as shall be reasonably advised, devised or required to effectuate the intention of these presents and to assure and confirm to the Depositary, or its successors in this trust, all and singular the aforesaid property, securities and rights hereinbefore described and hereby intended to be conveyed, so as to render the same subject to the provisions hereof, according to the true intent and purposes herein expressed.

VI. (a) The Depositary, under this agreement, or any of its successors, may, at any time, be removed from the trust, by instrument, or concurrent instruments, in writing, executed under the hand and seals of the holders of two-thirds in amount of the participation certificates then outstanding hereunder, or executed

by their attorneys in fact thereunto duly authorized, in writing, or it, or they, may resign the said trust upon sixty (60) days' written notice to the Depositor, or such shorter notice as may be acceptable to them; and any vacancy in the office of Depository, whether so created, or arising from insolvency, incapacity, or any other causes, may be filled by the appointment of one, or more, competent persons, or a corporation, as new depositaries, or as new depository, by an instrument, or concurrent instruments, in writing, executed under the hands and seals of a majority in interest of the holders of participation certificates then outstanding hereunder, or executed by their attorneys in fact thereunto authorized in writing, and that an appointment so made shall supersede and take precedence of any appointment made in any other way whatsoever.

(b) In case, after notice of such vacancy and of the present right of the certificate holders to fill the same shall have been published in two newspapers of general circulation in New York City, once a week for sixty (60) days, the certificate holders shall fail to fill such vacancy, by an appointment made as hereinbefore prescribed, then the Board of Directors of the Depository shall make a temporary appointment to fill such vacancy, which shall continue, until the holders of a majority in interest of the participation certificates then outstanding hereunder, or their attorneys in fact thereunto authorized, shall designate a new trustee, or trustees, to act hereunder.

(c) Any new depository, or depositaries, hereunder shall, upon their, his, or its, appointment, and without any further act, deed or conveyance, become and be vested with the possession of the property and securities hereby pledged and assigned, and intended so to be, and all other property and securities then held by the Depository hereunder, and all of the estates, trusts, rights, powers and duties of the Depository in whose place he, they, or it, shall have been appointed; but, nevertheless, the respective parties hereto and their respective successors and assigns shall, and will, upon request, make, execute and deliver all such releases, conveyances, and assurances as shall be appropriate, to vest in and confirm and assure to such new depositaries, or depository, all such estates, trusts, rights, powers and duties, according to the intent above expressed.

VII. The Depository, for itself and its successors or successor, hereby accepts the trust and assumes the duties herein created and

imposed upon, and only upon, the following terms and conditions, to wit:

(a) The recitals of fact in this agreement, and in the note hereby sold, assigned, transferred, set over and deposited with it, and in the participation certificate or certificates hereby secured, are to be taken as statements by the Depositor and shall not be construed as made by the Depositary.

(b) The Depositary may select and employ in and about said trusts and duties, agents, attorneys and counsel, whose reasonable compensation shall be paid to the Depositary by the Depositor, or, in default of such payment, shall be a charge upon the note hereby deposited and its proceeds, paramount to the interests of the holders of certificates issued hereunder; and the Depositary shall not be responsible for the application of the certificates issued hereunder, or any part thereof, and shall not be liable for any neglect, omission, or other wrong-doing, of the Depositor, or of the agents, attorneys or counsel of said Depositary, if reasonable care has been exercised in his, or their, selection; nor shall it be otherwise answerable for anything whatsoever in connection with the trusts created by these presents, save for its own wilful misconduct or gross negligence, anything in this agreement, or the certificates issued hereunder, to the contrary notwithstanding.

(c) The Depositary shall be under no obligation, or duty, to perform any act hereunder, or to defend any suit in respect hereof, unless fully indemnified to its satisfaction, nor shall the Depositary be bound to recognize any person as a certificate holder, until his certificate issued hereunder is submitted to the Depositary for inspection, if required, and his title thereto satisfactorily established, if disputed.

(d) The exclusive right of action upon the note hereby deposited shall be vested in the Depositary, and no certificate holder shall have the right to enforce the payment of the same, or the provisions of this agreement under which it is issued, or secured, until after demand upon the Depositary, accompanied by a tender of indemnity satisfactory to it as aforesaid, and a refusal by the Depositary to act, in accordance with such demand.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be subscribed in their respective corporate names, by their respective Presidents or Vice-presidents, and their corporate

seals to be hereunto affixed, and attested by their respective Secretaries, as of the day and year first above written.

Smith Syndicate,
By John Doe,
President.

(Seal)

Attest:

Richard Roe,
Secretary.

Koe Trust Company of New York,
By Henry Koe,
President.

(Seal)

Attest:

John Jones,
Secretary.

No. 345.

Assignment of account receivable as collateral security.⁵

KNOW ALL MEN, that the undersigned, for value received, hereby bargains, sells, assigns, transfers and sets over unto Richard Roe (residing at No. 11½ Broadway, Borough of Manhattan, New York City), and his assigns, the claim, or the account, set forth, or described, in the annexed statement, and all his right, title and interest in and to the goods covered thereby, or described therein, and all moneys due, or to grow due, upon the sale, or sales, therein set forth, and the sole right to collect the same, and the undersigned hereby constitutes and appoints said Richard Roe, its true and lawful attorney, irrevocably, for it, and in its name and stead, but to his own use and benefit, to sell, assign, transfer, set over, pledge, compromise, or discharge, the whole, or any part, of the aforesaid claim, or account, and, for that purpose, to do all acts and things necessary, or proper, in the premises, and one or more persons to substitute with like power, hereby ratifying and confirming all that its said attorney, or his substitute, or substitutes, shall lawfully do by virtue hereof.

The undersigned, knowing that this account is to be re-assigned

⁵ Adapted from *Presser v. Central Trust & Savings Co.* (1922), 232 N. Y. 573, 134 N. E. 577.

by the said Richard Roe to a financial institution, or person, and is to be given to said financial institution, or person, as collateral security for a loan to be made to the undersigned, for the express purpose of inducing said institution, or person, to which it may be assigned by said Richard Roe, to part with its money and to make the said loan to the undersigned, does hereby make the following representations both to Richard Roe and the said financial institution, or person:

1. That the annexed account represents a *bona fide* sale, and that all of the merchandise represented as sold was packed and shipped to the customer as stated therein.

2. That the amount set forth in the account upon the reverse side hereof is owing to, and outstanding to the credit of, the undersigned for a *bona fide* sale of merchandise.

3. That the said claim has not been transferred, or assigned, or given, in any way, as collateral security, or otherwise, and that no person, firm, or corporation, except the undersigned, has any lien on, or claim to, said account, or to the merchandise described therein, or any part thereof.

4. (a) That no payment has been made by the customer upon the within account, either to the undersigned, or for its benefit.

(b) That there exists no offset, or counterclaim, thereto, and that no agreement has been made with the customer, under which any deduction, or discount, may be claimed, except as stated therein.

5. That if any checks, or moneys, due on the account hereby assigned, shall, at any time, come to the undersigned, such checks, or money, shall be accepted by the undersigned as the property of the institution, or person, lending the money hereon, and be immediately transferred to Richard Roe.

6. The undersigned hereby guaranties the acceptance of the within stated merchandise by the consignee, and the payment in full of the said account.

IN WITNESS WHEREOF, John Doe & Co. has caused this assignment to be executed by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, this 5th day of January, 1923.

John Doe & Co.,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

[Statement Annexed.]

John Doe & Co.,
No. 11½ Broadway,
Borough of Manhattan,
New York City.

Number

A.575.

Certificate of Indebtedness.

Below is a true and correct copy of invoice rendered for goods sold
and delivered.

Amount

\$2,500.

Sold to Henry Koe & Co.,
57 Smith Street,
New York City.

Terms, 6% 10 days.

Case No.	Lot No.	Pairs or Yards.	Description.	Price.
X1	210	500	Silk	\$5

No. 346.**Assignment of chattel mortgage as collateral security.⁶**

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Assignor"), in consideration of one hundred (\$100) dollars to me paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Assignee"), hereby assign unto the said Assignee a certain chattel mortgage made by John Jones, dated January 2, 1923, and filed in the office of the register of the county of New York, on January 2, 1923, at 10.30 A.M., together with the debt, or obligation, described in said chattel mortgage, and the moneys due and to grow due thereon, with the interest.

⁶ Adapted from *National Nassau Bank v. Cleary* (1916), 171 App. Div. 540, 157 N. Y. Supp. 696.

TO HAVE AND TO HOLD the same unto the Assignee, and to the successors, legal representatives and assigns of the Assignee, forever.

And the Assignor covenants that there is now owing upon said chattel mortgage, without offset, or defense, of any kind, the principal sum of five thousand dollars (\$5,000), with interest thereon at five (5%) per cent per annum from January 2, 1923.

This assignment is made as collateral security for the payment of a certain promissory note, made by Mary Doe, dated January 2nd, 1923, for five hundred (\$500) dollars, to the order of the Assignor, and discounted by the said Assignee on January 5, 1923; and such chattel mortgage shall be re-assigned to the said Assignor, by the said Assignee, when the said note is fully paid and discharged at its maturity.

IN WITNESS WHEREOF, the Assignor has hereunto set his hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
Richard Brown

No. 347.

Assignment of ground rents as collateral security for loan.⁷

THIS INDENTURE, made January 5, 1923, between the Doe Construction Co., Inc., a corporation, duly organized under the laws of the State of New York, having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 371½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party is indebted to the Second Party in the sum of five thousand (\$5,000) dollars, as evidenced by a certain bond, made by the First Party to John Smith, and which bond is secured by a certain mortgage, affecting the premises on the north-west corner of Koe Avenue and 14th Street, Borough of Manhattan, New York City, known as No. 150 Koe Avenue, and which bond and mortgage were thereafter assigned by the said John Smith to the Second Party, who is now the owner and holder thereof:

⁷ Adapted from *Conley v. Fine* (1918), 181 App. Div. 675, 169 N. Y. Supp. 162.

Now, for the purpose of furthering securing the payment of the said sum of five thousand (\$5,000) dollars and interest, in accordance with the terms thereof, and in consideration of one (\$1) dollar, lawful money of the United States, paid by the Second Party to the First Party, the receipt whereof is hereby acknowledged, the First Party hereby sells, assigns and transfers unto the Second Party, his executors, administrators and assigns, all of the rents, issues and profits arising from the said premises, No. 150 Koe Avenue, which are more particularly described, as follows:

All that certain lot, piece, or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City of New York, bounded and described, as follows:

BEGINNING * * *

TO HAVE AND TO HOLD the same unto the Second Party, his executors, administrators and assigns, until the sum of five thousand (\$5,000) dollars, and interest, and any other amount, which by the terms of said mortgage, may be secured thereby together with any further indebtedness of the First Party to the Second Party, are fully paid to the Second Party; and it is expressly understood and agreed between the parties hereto, as follows:

1. That the First Party hereby appoints the Second Party, its true and lawful attorney, irrevocable, in its name, place and stead, to ask, demand, sue for, attach, levy, recover and receive all sums of money, which now are, or hereafter may become, due, owing, and payable for, or on account of, any of the rents, or profits, accruing from the said premises aforesaid from any of the present, or future, lessees, tenants, sub-tenants, or occupants thereof, with full power to institute any and all legal proceedings for the collection of rents, or for taking possession of the said premises, or any part thereof, including summary proceedings.

2. That the Second Party shall render monthly statements to the First Party of the moneys collected out of the premises hereby described.

3. That, if the First Party shall fail to comply with any of the requirements of any municipal department, within thirty (30) days after notice to do so shall have been received by it, then, upon its failure to comply with the same, the Second Party shall have the right to declare the principal sum hereby secured to be imme-

diately due and payable, and such sum, in the event of such election, shall be forthwith paid to the Second Party.

4. That the Second Party shall have the right to make all necessary disbursements in connection with the management of the property and the payment of any charge against said premises, and any disbursements made by the Second Party in connection with the management of said property shall be presumed to be reasonable; but nothing herein contained shall obligate the Second Party to use any of the moneys collected by him out of the rents aforesaid for the payment of any charges against said premises, or for the payment of any disbursements in connection with the management of the property.

IN WITNESS WHEREOF, the First Party has signed this instrument, by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

Doe Construction Co., Inc.,
By John Doe,
President.

(Seal)

Attest:

John Brown,
Secretary.

Richard Roe (L.S.).

No. 348.

Assignment of life insurance policy, as collateral security.^a

KNOW ALL MEN, that I, John Doe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, in consideration of the loan to me of the sum of five hundred (\$500) dollars, by Richard Roe, the receipt of which is hereby acknowledged, do hereby assign the certain policy of insurance on my life in the Koe Life Insurance Co., of Cincinnati, Ohio, bearing No. 152, unto the said Richard Roe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, as his interest may appear; provided, however, that it is expressly understood and agreed that I reserve

^a Cf. *Collins v. Dawley* (1878), 4 Colo. 138, 34 Am. Rep. 72; *Badley v. American Deposit & Loan Co.* (1901), 165 N. Y. 672, 59 N. E. 1118.

the right to apply to the payment of premiums all dividends and the surrender value of all additions purchased by dividends.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones.

No. 349.

Assignment of moneys due under construction contract, as collateral security.⁹

KNOW ALL MEN, that—

WHEREAS, an agreement in writing, dated August 24, 1922, heretofore was entered into between John Doe, engaged in business at No. 11½ Broadway, Borough of Manhattan, New York City, as contractor, and the Roe Railroad Co., in and by which agreement the said John Doe agreed to furnish all of the labor and materials, and to perform all of the work required, for the construction of a passenger station at Roeville, New York, for the sum of seventy thousand (\$70,000) dollars, and the said Roe Railroad Co. agreed to pay said sum to the said John Doe, for said labor, materials and work; and

WHEREAS, said John Doe heretofore entered upon his performance of said agreement, and is now engaged in carrying the same to completion; and

WHEREAS, of said contract price of seventy thousand (\$70,000) dollars, there now remains unpaid a balance of ten thousand (\$10,000) dollars, which sum will hereafter become due and owing from said Roe Railroad Co. to said John Doe, from time to time, as he continues and concludes his performance of said agreement; and

WHEREAS, said John Doe is indebted to Koe National Bank, a banking corporation, organized under the laws of the United States, and having its place of business at No. 37½ Broadway, Borough of Manhattan, New York City, in the sum of sixty thousand (\$60,000) dollars, as evidenced by the valid promissory note of the said John Doe for said sum, dated at New York, October 4, 1922, payable, with interest, after date, to his own order at the said Koe National

⁹ Adapted from *American Hardware Corporation v. John L. Lytle, as Trustee* (1918), 222 N. Y. 201, 118 N. E. 604.

Bank, by him endorsed, and now held and owned by the said Koe National Bank; and

WHEREAS, said sum of sixty thousand (\$60,000) dollars was advanced by the said Koe National Bank to said John Doe, upon the understanding and agreement that the same should be applied by him only to the securing of labor and materials necessary to his further performance of the agreement with the Roe Railroad Co., hereinabove referred to, and of his certain other existing agreements for construction work, and upon the further understanding and agreement that, in order to secure the payment of said note, said John Doe would assign to said Koe National Bank all moneys due, or to become due, to him, under his said agreement with the Roe Railroad Co., for all labor and materials done, or furnished by him thereunder:

NOW, THEREFORE, in order to secure the payment hereafter to said Koe National Bank, or to its successors, or assigns, upon its, or their demand, of said promissory note, with interest, and any and every note which may hereafter be made and delivered in renewal of said existing note, or of any part thereof, and in consideration of the sum of one (\$1) dollar, to me in hand paid, the receipt whereof is hereby acknowledged, I, the said John Doe, do hereby assign, transfer and set over unto the said Koe National Bank, its successors and assigns, all and whatsoever sum, or sums, of money, now due, or which shall hereafter become due, to me, or to my executors, or administrators, from the Roe Railroad Co. under, or on account of, said agreement of August 24, 1922, or for, or on account of, any labor, or materials, done, or furnished, under said agreement, or in connection with the construction work therein specified, together with my every right to receive said moneys, or any part thereof.

And I, the said John Doe, do hereby appoint said Koe National Bank, its successors and assigns, my true and lawful attorney, irrevocable, for me, and in my name and stead, to collect and receive all of said moneys, and give acquittance for the same, hereby authorizing and requesting the payment of all of said moneys directly to said Koe National Bank, its successors, or assigns, instead of to myself.

And I, the said John Doe, do hereby, for myself, my heirs, executors and administrators, covenant and agree to and with the said Koe National Bank, its successors and assigns, (1) that I have not heretofore assigned any part of said moneys, which are hereby first

assigned, and (2) that no part of said balance of the contract price hereby assigned has been paid, and (3) that I will not hereafter collect, or receive, any part of the moneys hereby assigned, except for and on account of the said Koe National Bank, its successors and assigns.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed my seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Brown.

No. 350.

Assignment of mortgage as collateral security.¹⁰

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Assignor"), in consideration of one hundred (\$100) dollars to me paid by Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Assignee"), hereby assign to the said Assignee a certain mortgage made by John Jones, given to secure the payment of the sum of five hundred (\$500) dollars and interest, dated January 5, 1922, and recorded on January 5, 1922, in the office of the Register of the County of New York, in Liber 97A of Mortgages, at page 73, covering premises No. 97½ Broadway, Borough of Manhattan, New York City, together with the bond, or obligation, described in said mortgage, and the moneys due and to grow due thereon, with the interest.

TO HAVE AND TO HOLD the same unto the Assignee, his successors and legal representatives, forever.

UPON CONDITION, however, that if I, the said Assignor, shall well and truly pay, or cause to be paid, to the said Assignee on or before June 5, 1923, the sum of five thousand (\$5,000) dollars, with interest at the rate of five (5%) per cent per annum, from June 5, 1922, then this assignment shall be null and void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, the Assignor has hereunto set his hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

Henry Brown.

¹⁰ Cf. *Meyer v. Moss* (1902), 110 La. 132, 34 So. 332.

CHAPTER XIX
PRINCIPAL AND AGENT

- No. 351—Agreement appointing factor.
No. 352—Same—another form.
No. 353—Agreement of father retaining attorneys upon contingent basis, in his own behalf, and as guardian of his son, to recover for injuries to infant son.
No. 354—Agreement of manufacturer of patterns appointing department store its agent.
No. 355—Agreement of manufacturer appointing exclusive territorial sales agent for automatic typewriters.
No. 356—Agreement of owner of real estate retaining attorney upon contingent basis, to recover award in condemnation proceedings.
No. 357—Power of attorney to execute commercial paper.
No. 358—Power of attorney to collect debts of a business.
No. 359—Power of attorney to collect dividends.
No. 360—Power of attorney to manage mines.
No. 361—Power of attorney to manage, lease and sell real estate.
No. 362—Power of attorney to sell real estate owned jointly.
No. 363—Power of attorney to sell shares of stock.
No. 364—Power of attorney to solicit and accept subscriptions and collect the proceeds thereof.
No. 365—Power of attorney—unrestricted.
No. 366—Power of attorney appointing substitutes, executed by agent.

No. 351.

Agreement appointing factor.¹

AGREEMENT, made January 5, 1923, between John Doe, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Bor-

¹ Adapted from *Eiseman & Co., Inc. v. Kugelman* (1919), 188 App. Div. 718, 177 N. Y. Supp. 495.

ough of Manhattan, New York City (herein called the "Factor"), and Richard Roe Corporation, a corporation, duly organized under the laws of the State of New York, and having its principal place of business at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Consignor"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The Consignor hereby makes, constitutes and appoints the Factor its sole factor and selling agent, and hereby agrees to consign to the Factor, at its premises, No. 11½ Broadway, Borough of Manhattan, New York City, or at such other place, or places, as may, from time to time, be agreed upon, and to sell and deliver through said Factor, all goods, wares and merchandise, which the Consignor owns, or which the Consignor may hereafter purchase, or acquire, or the sale of which the Consignor may control.

2. The Factor agrees to act as such factor, but only upon the terms and conditions herein set forth.

3. All sales of consigned merchandise shall be made in the name of the Factor, and on its order blank, and no sales shall be made, unless the same shall have been first approved of by the Factor, and checked by its credit clerks, in respect of the credit risk and standing of the proposed purchaser.

4. (a) All orders and contracts for the sale of consigned merchandise shall provide that the purchase price thereof shall be payable only to the Factor, and the merchandise sold shall be delivered by, or for the account of, the Factor, and the bills and invoices therefor, which may be sent to the purchasers thereof, shall be in form satisfactory to the Factor, and in the name of the Factor, as factor and commission merchant, and shall provide that the amount thereof shall be payable only to the Factor.

(b) The title of the Factor to the accounts of any consigned merchandise sold shall be confirmed, at any time, that the Factor may elect, by due assignment thereof, in form satisfactory to the Factor.

(c) The Factor shall be entitled to collect and receive the proceeds of all such sales, and shall be entitled to exercise all the rights and remedies of the seller of the goods, including the right of stoppage in transit, subject only to the obligation of the Factor, as factor, to account to the Consignor for such proceeds.

5. (a) The Factor shall guaranty the accounts arising from the sale of such consigned merchandise after the final acceptance of the

merchandise by the purchaser, provided, however, such sale shall first have been approved and checked by the Factor, in respect of the credit risk and standing of the proposed customer as herein provided; and the Factor shall render an account of all sales monthly, within fifteen days after the end of each calendar month, and thereupon shall discount such sales, at the rate of six (6%) per cent per annum, upon, or as of, the last day of the month in which such sales shall have been made, adding ten days for the delay in collections to the average due date; and the net amount of such sales shall be credited to the Consignor in the account current, upon, and as of, the last day of the month.

(b) In the event that, after any such sale shall have been discounted by the Factor, the purchaser thereunder shall reject the merchandise represented thereby, or shall refuse to pay the full purchase price thereof at maturity, upon the ground that the merchandise delivered to such purchaser has not been finally accepted, or that such purchaser is not bound to pay the price thereof, then the amount theretofore credited to the Consignor on account of such sale, together with the interest thereon from the date of the credit, shall be charged back by the Factor to the Consignor.

(c) In the event that, in the judgment of the Factor, the credit of any customer shall be impaired, subsequent to the acceptance of any order from such customer, and prior to the actual delivery of the merchandise thereunder, the Factor shall have the absolute right to refuse to deliver the merchandise to such customer, and, in such an event, the Factor shall not assume any responsibility, or be or become liable in any manner whatsoever, for the failure to deliver such merchandise.

6. (a) The Factor shall advance to the Consignor, within ten days after request therefor, eighty (80%) per cent of the net proceeds, or discounted value, of such guarantied accounts resulting from such sales; and such advances shall be charged to the Consignor in the account current, and shall bear interest at the rate of six (6%) per cent per annum, and shall be subject to reduction, in case the merchandise represented thereby shall be rejected, or if the purchaser shall dispute, or question, his obligation to pay the full purchase price thereof.

(b) Any and all credit balances in favor of the Consignor in the account current may be paid by the Factor monthly.

7. (a) The Factor shall loan and advance to the Consignor, within ten days after request therefor, upon the merchandise so consigned to the Factor hereunder, an amount which shall not exceed sixty-six and two-thirds ($66\frac{2}{3}\%$) per cent of the value of the merchandise so consigned, unless such net invoice value shall exceed the net cash market value thereof, and, in such event, the Factor shall advance thereon sixty-six and two-thirds ($66\frac{2}{3}\%$) per cent of the net cash market value thereof; provided, however, that the total amount owing to the Factor from the Consignor for advances on merchandise shall not exceed the sum of thirty thousand (\$30,000) dollars. This limitation may be increased, or advanced, at the option of the Factor.

(b) The net invoice, or market, value of the merchandise, which may be purchased by the Consignor in the name of the Factor, subject to the terms and provisions of this contract, shall not exceed fifty thousand (\$50,000) dollars, and such amount, it is agreed, shall be the maximum limit of the total of stock on hand and purchases of the Consignor which may be made in the name of the Factor; provided, however, that such maximum limit may be advanced, or increased, at the option of the Factor, but not otherwise.

(c) The term "net invoice value," and the term "net cash market value," as herein employed, shall be deemed to mean the value less the discount allowed to customers and the commissions agreed to be paid in respect thereof.

8. (a) If the parties hereto shall be unable to agree upon the net cash market value of the merchandise consigned to, and in the possession of, the Factor, for the purpose of determining the amount of advances to which the Consignor shall be entitled, under the terms of this agreement, against the amount of merchandise so consigned to the Factor and in its possession, at any time during the continuance of this agreement, or if the Factor shall be of the opinion that the amount of money already advanced upon such merchandise is more than the percentage of advances thereon to which the Consignor is entitled, under article "5" hereof, then, and in such event, such net cash market value shall be determined in the following manner, to wit: The Factor shall appoint an appraiser to appraise the merchandise, and the Consignor shall, likewise, within three days after receiving notice of such appointment from the Factor, appoint an appraiser for that purpose, and

the two appraisers shall forthwith appoint an umpire, and, thereupon, the two appraisers and the umpire so designated shall forthwith proceed to ascertain the net cash market value thereof; and the decision of one of the said appraisers and the said umpire shall be binding upon the parties hereto, for each and every purpose of this contract, at the time of such appraisal; and the expense of such appraisal shall be borne by both parties hereto in equal proportions.

(b) If the Consignor shall fail, or refuse, to appoint an appraiser, within three days from the time the appraiser of the Factor shall have been appointed, or if the appraisers, when appointed, shall fail to agree upon an umpire within three days, or if said appraisers and the umpire shall fail to make a determination, within three days after their appointment, then, and in any such event, the Factor shall have the right immediately to proceed with the sale of the said merchandise, either at public, or private sale, and either upon credit, or for cash, and, at any such sale, the Factor may become the purchaser thereof.

9. (a) All merchandise consigned hereunder shall be so consigned and delivered to the Factor, at, and upon, the premises of which the Factor shall then be the lessee, and the said premises and the merchandise therein contained shall, at all times, remain in the actual and exclusive custody, possession and control of the Factor.

(b) All purchases, which may be made by the Consignor, in the name of the Factor, shall be subject to the written and signed confirmation of the Factor.

10. The Factor shall have title, subject only to its obligation, as such factor, to account therefor, to all accounts, remittances, checks, and bills receivable, and the proceeds of any sale, or sales, resulting from, or arising in connection with, the sale, or sales, of the merchandise hereunder, and from the conduct of such agency business.

11. (a) Upon the premises to which said goods shall be consigned to the Factor and sold hereunder, there shall be conspicuously displayed, at the entrance thereof, and within said premises, and at any other place, or places, where the same may be required, or desired, by the Factor, a sign, or signs, of the kind and character satisfactory to the Factor, which shall bear the following words:

JOHN DOE, INC.,

FACTOR FOR

RICHARD ROE CORPORATION.

(b) No other sign shall be placed, or displayed, upon, or within, said premises, without the written approval and consent of the Factor.

12. (a) The Factor shall supply to the Consignor reasonable selling facilities and store room for the display of the merchandise dealt in by it, upon the premises of the Factor, at No. 11½ Broadway, Borough of Manhattan, New York City, where said merchandise is to be sold. The character, extent and location thereof in the said premises shall be entirely within the discretion of the Factor.

(b) The Factor shall pay none of the employees of the Consignor, but shall bear and pay the expense of checking, billing, shipping and charging all of the merchandise sold by the Consignor hereunder, and shall deliver and forward the same to customers and common carriers, within the confines of the Borough of Manhattan, New York City, and shall furnish local telephone service, not in excess of four thousand (4,000) calls a year.

(c) The Consignor shall bear and pay all expenses of its business not herein specifically enumerated, except such as the Factor, under this agreement, shall be obligated to bear and pay; and all expenses incurred to pay express and transportation charges on any merchandise rejected, or returned, by any customer, shall be borne and paid by the Consignor, and, if the same shall be disbursed by the Factor, such disbursements shall be charged by the Factor to the account of the Consignor.

13. (a) All merchandise on hand and in any warehouses shall be insured by the Factor in solvent companies against loss by fire and burglary, and the loss, if any, shall be paid to the Factor, as the Factor's interest therein may appear. In the event of a loss, any expense which the Factor may incur in adjusting the same shall be charged to the Consignor.

(b) In addition to the amount which the Factor shall be entitled to (in the event of loss by fire or burglary), by reason of its advances, interest and other charges, the Factor shall be entitled to deduct from the amount of such losses paid to him by the insurance companies, its commissions and discounts allowed to customers upon the amount so received in payment for the merchandise damaged or destroyed.

14. For the services rendered by it hereunder, and for guarantying accounts approved by it, as hereinbefore provided, the

Factor shall be entitled to charge and receive a commission of three and three-quarters ($3\frac{3}{4}\%$) per cent on all net sales up to a total of two hundred and fifty thousand (\$250,000) dollars, and three (3%) per cent on all net sales in excess of this amount, per annum.

15. As security for the advances now, or hereafter, made, and whether or not the same shall be within, or exceed, the limitation herein mentioned, and for its commissions and expenses (except the expenses hereinbefore assumed by it), and for all indebtedness and liability of the Consignor to the Factor, and for all other liabilities, excepting only such as are herein expressly assumed by it, the Factor shall, at all times, have a general lien upon all of the said consigned goods, and upon all of the proceeds of each sale thereof, and upon any and all accounts, notes, drafts, bills receivable, or any other evidence of indebtedness, arising out of, or from, any such sale.

16. The rights of the Factor under this agreement, including the right to have, hold and sell the consigned goods as aforesaid, and to collect and receive the proceeds thereof and of the said accounts, and to its said commissions, shall not be affected by any devolution, or transfer, of the rights, or interest, of the Consignor, whether the same shall be voluntary, or by act of law; and, in the event of any such devolution, or transfer, or of the failure of the Consignor to do, or perform, any, or all, of the covenants, conditions or agreements on its part to be performed, as hereinbefore provided, the Factor shall be entitled to proceed with the sale, or disposal, of the consigned merchandise, for such price, and in such manner, as the Factor may deem best, whether at public or private sale, and charge them to the Consignor, or against the proceeds of the sale of such consigned merchandise, in addition to its commissions as aforesaid, and any expense incurred by it in connection therewith; and nothing herein contained shall be construed to prevent, or prohibit, the Factor from becoming the purchaser, at any such sale, or sales.

17. In case of the transfer of this account, at the termination of this agreement as herein provided, or otherwise, the Factor shall be entitled to receive a transfer commission of two and one-quarter ($2\frac{1}{4}\%$) per cent of the market value of all consigned merchandise, which may be in possession of the Factor.

18. (a) Accounts current shall be rendered by the Factor to the Consignor between the first and fifteenth days of each month, as of

the last day of the preceding month, and shall be due and payable on the first day of the month following such advances, together with all accrued interest thereon, and, if not so paid, such principal and interest shall bear interest up to the time of such payment.

(b) Interest shall be charged and credited, at the rate of six (6%) per cent per annum.

19. Upon the termination of this agreement, then, if all of the indebtedness and claims of the Factor shall not be paid within ten (10) days from the termination hereof, the Factor shall have the absolute right and privilege to sell any, or all, of the merchandise, or other security, held by it for advances, charges and commissions, either at public, or private, sale, and either for cash, or upon credit, and upon such terms, and at such prices, as it may deem proper, and apply the net proceeds thereof, after deducting the cost of such sale, and its commissions, and charges therefor, to the reduction of the indebtedness of the Consignor, under this agreement; and the Factor may become the purchaser, at any such sale, or sales.

20. That, if any litigation shall arise, or if there shall be any necessity of employing counsel through any of the causes enumerated in articles "3" and "4" of this agreement, or because of any reason whatsoever in connection with the dealings of the Consignor and his customers, any such employment of counsel, litigation, or the adjustment thereof, may be undertaken and conducted by the Consignor, acting in behalf of the Factor, but at the expense of the Consignor; and it is agreed that, if required by the Consignor, and upon the request of the Consignor, the Factor will make due re-assignment to the Consignor of any of said accounts, for the purpose of such litigation, or adjustment.

21. This agreement shall commence on the 1st day of February, 1923, and shall continue in full force and effect until the 31st day of January, 1923, and from year to year thereafter, until either party shall give ninety (90) days' notice in writing to the other of its intention to terminate the same on the 31st day of January in any year; and such notice shall be deemed sufficient, if sent by United States registered mail to either party, directed to the other at its office, as hereinbefore stated, or at such other place as such party may, at the time of such notice, then be conducting business.

22. This agreement shall bind the parties hereto, and each of their successors and assigns.

IN WITNESS WHEREOF, each party hereto has signed this instrument, by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, the day and year first above written.

John Doe, Inc.,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe Corporation,
By Richard Roe,
President.

(Seal)

Attest:

Charles Brown,
Secretary.

No. 352.

Same—another form.²

AGREEMENT, made January 5, 1923, between Doe Corporation, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "Corporation"), and Richard Roe Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Factor"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The Corporation hereby constitutes and appoints the Factor as its sole consignee and lienor, and agrees to deliver to said Factor, at such place, or places, and in such manner, as may be designated by the Factor, all goods now owned by it and all goods which it may purchase, manufacture, acquire, or have consigned to it, with authority to pledge, at any time during the continuance of this agreement.

2. Such goods shall be delivered into the sole and exclusive possession of the Factor, at premises designated by the Factor, and there shall be placed and maintained in a conspicuous place at the

² Adapted from *Allied Silks Mfgs., Inc. v. Erstein* (1921), 195 App. Div. 366, 186 N. Y. Supp. 295.

entrance of every building, or place, in, or at, which said goods, or any part thereof, shall be located, kept, or stored, in legible English, a sign which shall bear the following words:

RICHARD ROE CO., INC.,

FACTOR FOR

DOE CORPORATION

or such other wording as the Factor may designate.

3. The Factor shall make advances upon goods delivered to it, to the extent of seventy-five (75%) per cent of the net value of plain goods, and sixty-six and two-thirds ($66\frac{2}{3}\%$) per cent of the net value of fancy goods; and the Factor shall have exclusive possession, supervision, and control of any goods whereon any such advance shall be made.

4. (a) The Corporation may make sales of the goods so delivered to the Factor, and the Factor shall deliver the goods held by it, upon sales made by the Corporation; but, upon any such sale being made, any and all accounts created by any such sale and delivery of such goods, as and when created, shall belong to, and be the property of, the Factor, to the extent of the lien of such Factor; and, as and when created, such accounts shall be assigned to the Factor, by assignment, in form approved by said Factor, and all invoices to the debtors of the Corporation shall contain thereon the words, "Payable only to Richard Roe Co., Inc., No. 37 $\frac{1}{2}$ Broadway, Borough of Manhattan, New York City, to whom this account has been transferred."

(b) The Factor shall permit the Corporation to sell said goods, at the Factor's premises, and shall give the Corporation sufficient facilities for transacting its business, and, upon any sale being approved by the Factor, the Factor shall cause the goods to be delivered.

(c) The Factor shall furnish fire, sprinkler and burglary insurance for the goods delivered to it, and shall, upon the sale of such goods, furnish the men and facilities necessary for billing, book-keeping, packing, shipping, and delivering the same.

(d) The Factor shall supply, without charge, all local telephone calls, postage, and stationery necessary for the transaction of business, excepting order blanks.

(e) All expenses connected with the selling of the goods, except as hereinbefore otherwise stated, shall be borne by the Corporation,

and the Factor shall not, in any wise, be responsible for any salaries of any employees employed by the said Corporation; but the Factor shall, however, advance fortnightly, out of any moneys in its possession, which may then be due to the Corporation, the moneys required for the payment of salaries of employees of the Corporation.

5. (a) The Factor shall guaranty the payment in full of such accounts for the sale of merchandise as it may approve of and check; provided that all loss under said guaranty of said accounts, to be sustained and assumed by the Factor, shall be limited to one-half of one per cent upon the net amount of sales guaranteed by the Factors, and the Factor shall, at all times, have a general lien upon all goods in its possession, and upon any accounts representing the sale of any such goods, and upon all moneys in its hands, which may be the proceeds of the collection of any accounts, and upon any other property, assets and effects in its possession, for any sums due, or to become due, to said Factor, under this agreement, including any losses incurred by the guaranty aforesaid exceeding one-half of one per cent, as aforesaid.

(b) The guaranty of accounts, which shall be made by the Factor, as aforesaid, shall be a guaranty of the solvency of customers only, and the Factor shall not be liable upon any such guaranty, in case any account shall not be collected, by reason of the fact that the debtor, or debtors, avoid payment thereof, by reason of any defense to the contract to sell, or contract of sale.

6. The Corporation shall be responsible for any shortage of goods delivered to the Factor, except such as may be caused by, or be due to, the negligence of any employees of the Factor.

7. The Corporation shall consign all of the goods in its possession, from time to time, to the Factor, and shall not apply for, or procure, advances on goods from any source other than from the Factor, during the continuance of this agreement.

8. The Corporation shall pay the Factor, for the services performed by it, two and one-half per cent on all net sales of goods in the possession of the Factor, and six per cent per annum on all advances made by the Factor; and the Corporation shall repay to the Factor all loans made by it, and interest thereon, as herein provided, and all charges which the Factor shall be entitled to make, under and pursuant to this agreement.

9. If the Corporation shall become insolvent, or if a petition in voluntary bankruptcy shall be filed by it, or a petition in invol-

untary bankruptcy shall be filed against it, or if it shall make a general assignment for the benefit of creditors; or if the Corporation shall go into the hands of a trustee for the benefit of creditors; or if a receiver shall be appointed, or if a judgment shall be recovered against it, or if it shall violate any of the terms and conditions hereof, then, and in any such event, any and all sums loaned by the Factor to the Corporation, and any and all charges provided for herein, whether then due and payable by the Corporation, or not, shall be, and immediately become, due and payable; at the option of the Factor, anything herein to the contrary notwithstanding; and this contract shall, at the option of the Factor, immediately cease and determine, and be of no further force and effect.

10. In the event of a termination of this contract, either by the lapse of time, or for any other cause, or in the event of the nonpayment of any sum due, or to become due, to the Factor from the Corporation, and if such default in payment shall continue for twenty days thereafter, the Factor shall have the right, in case of such termination and of the nonpayment of any of the liabilities above, or herein, mentioned, to sell and deliver the whole, or any part, of the assets, property and effects aforementioned, given to it as security hereunder, at any broker's board, or at public, or private, sale, at the option of the Factor, at any time, or times, thereafter, without advertisement, or notice, and with the right on the part of the Factor to become the purchaser thereof, at such sale, or sales, free and discharged of any equity of redemption; and, after deducting all legal and other costs and expenses of the sale and delivery, the Factor shall apply the residue of the proceeds of such sale, or sales, so made, to pay any, either, or all, of said liabilities, returning the overplus, if any, to the Corporation; but the Corporation, notwithstanding any such sale, or sales, shall still remain liable for any amount which shall remain unpaid.

11. The Factor shall render monthly statements of account to the Corporation.

12. All notices, or communications, which are required to be given hereunder, may be sent by mail, addressed to the respective parties, at their respective business offices.

13. This agreement shall continue for one year from January 5, 1923, and shall continue thereafter from year to year, unless terminated by ninety days' notice in writing, prior to the expiration of the first year, or any year thereafter.

IN WITNESS WHEREOF, each of the parties hereto has signed this instrument, by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, the day and year first above written.

Doe Corporation,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe Co., Inc.,
By Richard Roe,
President.

(Seal)

Attest:

Henry Koe,
Secretary.

No. 353.

Agreement of father retaining attorneys upon contingent basis, in his own behalf, and as guardian of his son, to recover for injuries to infant son.³

New York City,
January 5, 1923.

Messrs. Roe & Koe,
No. 11½ Broadway,
New York City.

Gentlemen:

I, the undersigned, hereby retain you as my attorneys to take all steps, proceedings and actions necessary, or which you may deem proper, to collect for me and for my infant son, John Doe, Jr., any and all damages, claims and judgments, which may be obtained by me, either on my own behalf and/or on behalf of my said infant son, by reason of his having been injured by a street car in the Borough of Manhattan, New York City, on December 10, 1922; and

I hereby stipulate and agree that you may retain, as and for your compensation, one-third of all sums of money, which you may collect, on my own behalf, together with such costs as may be awarded in any action instituted by you, on my own behalf; and

³ Adapted from *Myers v. Brooklyn Heights R.R. Co.* (1918), 224 N. Y. 556, 120 N. E. 869.

I further stipulate and agree that, for all services performed by you as my attorneys in my capacity as guardian of my said infant son, you shall be entitled to receive and retain the reasonable value of your services, not exceeding, however, one-third of any moneys which may be collected.

It is understood that you shall be entitled to receive compensation only out of any moneys which you may recover, or secure, for me personally, or in my capacity as guardian of my said infant son.

Yours very truly,

John Doe,

No. 37½ Broadway,
New York City.

We hereby accept the foregoing retainer.

Dated, New York, January 5, 1923.

Roe & Koe,

By Richard Roe.

No. 354.

Agreement of manufacturer of patterns appointing department store its agent.⁴

THIS AGREEMENT, made January 5, 1923, between John Doe & Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe Company, a corporation, duly organized under the laws of the State of New York, and having its principal place of business at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party is engaged in the business of preparing, manufacturing and selling patterns; and

WHEREAS, the First Party, also, is engaged in the business of publishing and selling magazines; and

WHEREAS, the Second Party is engaged in maintaining and conducting a department store, at No. 37½ Broadway, Borough of Manhattan, New York City; and

WHEREAS, the Second Party desires to become the agent of the

⁴ Adapted from *Standard Fashion Co. v. Siegel-Cooper Co.* (1898), 157 N. Y. 60, 51 N. E. 408.

First Party in selling the patterns and publications of the First Party in its aforesaid department store:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the Second Party is hereby appointed an agent for the sale of the First Party's patterns and publications in the Second Party's department store aforesaid, for the term of two years from the date hereof; and said term shall be extended, from year to year thereafter, until terminated by three (3) months' notice in writing, given by either party to the other, within thirty (30) days after the expiration of said period of two years, or within thirty (30) days after the expiration of any one year thereafter.

2. That the First Party shall, at its own expense and risk, conduct the pattern department on the ground floor of the Second Party's department store aforesaid; and the First Party shall, in connection therewith, furnish its own employees, who shall, however, be subject to the rules for the government of employees, which now are, or hereafter may be, adopted by the Second Party.

3. The First Party shall, without charge, furnish to the Second Party, during each year that this contract shall continue, not less than two hundred thousand (200,000) eight-page fashion sheets, of the kind sold by it at the price of ten (\$10) dollars per thousand, and the First Party shall, without charge, print the advertisement of the Second Party, upon the front and back of such fashion sheets.

4. That the Second Party shall:

(a) Distribute the aforesaid fashion sheets from its store, or from its pattern counter, or counters, or from some other part of its department store.

(b) Permit the use of the space now used for the sale, or display, of paper patterns, and shall allow the use of the present pattern fixtures; provided, however, that, if a change in location shall be deemed advisable, the new location in such department store shall not be less prominent, nor occupy less space, than the present one.

(c) Furnish wrapping paper and twine, free delivery, and other store facilities.

(d) At the expense of the First Party, make frequent mention in its daily New York City newspaper advertisements of the fact that the Second Party is the agent for the sale of the First Party's patterns.

(e) Allow a reasonable display of attractive show cards and signs furnished by the First Party, at its own expense, in such convenient places in the Second Party's store, as the Second Party shall approve of.

(f) Not sell, or permit to be sold, on its premises, any other make of paper patterns, during the term of this contract.

4. That the First Party shall assume all risk of loss by fire, water, theft, or other unforeseen damage, to, or destruction of, the pattern stock, whether similar, or dissimilar, to any of the foregoing, and shall hold the Second Party harmless therefrom.

5. That the Second Party shall, at least once in each week, pay over to the First Party two-thirds ($\frac{2}{3}$) of all moneys theretofore received by it from the sale of the patterns and fashion publications of the First Party; and the remaining one-third ($\frac{1}{3}$) thereof shall be retained by the Second Party as remuneration for the permission herein granted to the First Party to conduct the aforesaid department, and as remuneration for all other services herein provided to be performed by the Second Party.

IN WITNESS WHEREOF, each of the parties hereto has signed this instrument, by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, the day and year first above written.

John Doe & Co., Inc.,

By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe Corporation,

By Richard Roe,
President.

(Seal)

Attest:

Henry Koe,
Secretary.

No. 355.

Agreement of manufacturer appointing exclusive territorial sales agent for automatic typewriters.⁵

THIS AGREEMENT, made January 5, 1923, between John Doe Corporation, a corporation, duly organized under the laws of the State of Ohio, and having its principal office at No. 37½ Euclid Avenue, City of Cleveland, State of Ohio (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

WHEREAS, the First Party manufactures, among other things, the Doe Automatic Typewriter, and its accessories; and

WHEREAS, the First Party is desirous of securing desirable sales representatives to promote the sale of such typewriters and accessories; and

WHEREAS, the Second Party is desirous of securing the sales agency thereof, for the territory hereinafter described:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. That the First Party hereby appoints the Second Party, and the Second Party hereby agrees to act for the First Party, as its exclusive sales agent in the sale of the First Party's automatic typewriters and accessories, within the City of New York.

2. That the duties of the Second Party shall consist of the following:

(a) Devoting all of his time and attention to the work of making sales of the Doe Automatic Typewriters and accessories.

(b) Delivering and installing all Doe Automatic Typewriters and accessories, which may be sold by the Second Party, in the offices, or places of business, of the purchasers thereof.

(c) Properly instructing the person, or persons, designated by the purchasers thereof to learn the operation and care of the Doe Automatic Typewriter and accessories.

(d) Caring for, and adjusting, and repairing, such Doe Automatic Typewriters and accessories, when requested to do so by the purchaser thereof, without charge to any purchaser, during the life of the guaranty of such typewriters.

⁵ Adapted from *Hoffer v. Hoover-Owens-Rentschler Co.* (1920), 192 App. Div. 138, 182 N. Y. Supp. 633.

(e) Performing all detail and clerical work connected with, or incidental to, the proper operation of the office to be maintained by the Second Party.

3. That the Second Party shall, within ten (10) days from the date hereof, establish a suitable office, or sales room, in New York City, for the demonstration of the Doe Automatic Typewriter and accessories, and for properly carrying on the details of the business connected with the agency herein provided for.

4. That the First Party shall, at its own expense, furnish to the Second Party all tools and all parts, which may be necessary, or required, to maintain the service necessary to perform the guaranty given to purchasers of Doe Automatic Typewriters.

5. That the First Party shall, at its own expense, furnish the services of a mechanic, who shall be known as the "Branch Mechanical Instructor," and whose duties shall be:

(a) To assume complete charge of the service, or repair, room.

(b) To adjust, inspect, and take care of, the Doe Automatic Typewriter and accessories.

(c) To instruct and supervise demonstrators employed by the Second Party.

(d) Nominally to be in charge of all property of the First Party, located in the Second Party's office, or sales room.

6. That the First Party shall, at its own expense, assume the responsibility for making proper adjustment and repairs of all Doe Automatic Typewriters and accessories, sold by the Second Party, when called upon to do so by the purchasers of such typewriters; and the Second Party shall make no charge whatsoever for any such service, or for any repairs made, or parts furnished, during the period covered by the guaranty given to purchasers of such typewriters by the First Party.

7. That the First Party shall furnish to the Second Party, at cost, all letterheads, envelopes and other printed stationery, which may be necessary for the proper conduct of the agency herein granted to the Second Party.

8. That the First Party shall furnish the services of a cashier, or office manager, whose duties shall consist of:

(a) Supervising all clerical work, incident to the proper conduct of the agency herein granted to the Second Party.

(b) Receiving all moneys belonging to the First Party and transmitting the same to the First Party, at its home office.

(c) Preparing and transmitting to the First Party, at its office, all reports connected with the work of the agency herein granted to the Second Party.

9. That the First Party shall do all advertising for the proper introduction of the Doe Automatic Typewriter and accessories, and shall, at its own expense, furnish the Second Party, with all pamphlets, catalogues, booklets, and other literature, which the First Party may, from time to time, print or produce.

10. That the Second Party shall abide by the selling rules, or regulations, which the First Party has adopted, or which it may hereafter adopt; and, in the event of any violation by the Second Party of any of said selling rules, or regulations, then, and in such event, the First Party may, at its option, abrogate this contract, by giving to the Second Party ten (10) days' written notice to that effect.

11. That the Second Party shall, within fifteen (15) days after demand therefor by the First Party, furnish to the First Party a fidelity bond in the sum of ten thousand (\$10,000) dollars, to cover the accountability of the Second Party and of all of his employees, for any property and moneys belonging to the First Party, which may be in, or come into, the possession of the Second Party, or any of his employees.

12. That the First Party shall deliver to the Second Party, or his order, Doe Automatic Typewriters and accessories, in such numbers as the Second Party may present bona fide orders for, taken on the sales order blanks furnished by the First Party, and which are accepted by the First Party.

13. That the First Party shall make all collections, in connection with the sale of Doe Automatic Typewriters and accessories, sold by the Second Party; but the Second Party, when directed so to do, shall, without charge to the First Party, assist the First Party in collecting all accounts, which may be due on sales made in the territory herein granted to the Second Party.

14. That the First Party shall pay to the Second Party a commission of twenty-five (25%) per cent on all sales made by the Second Party and accepted by the First Party; and such commission shall be payable between the first and fifth days of the month following the acceptance of the sale, out of all cash received from any such sale.

15. (a) That, if the Second Party shall be instructed by the

First Party to deliver a Doe Automatic Typewriter to some person, or persons, within the sales territory herein granted to the Second Party, but which typewriter, or typewriters, shall have been sold by some agent, or agents, controlling other sales territory, then, and in that event, the Second Party shall be entitled to receive sixty-six and two-thirds ($66\frac{2}{3}\%$) per cent of the commissions involved in any such sale, or sales.

(b) That, if the Second Party shall sell a Doe Automatic Typewriter, to be delivered outside of the sales territory herein granted to the Second Party, he shall notify the First Party thereof, and forward to the First Party all papers in connection therewith; and, thereupon, the Second Party shall be entitled to receive thirty-three and one-third ($33\frac{1}{3}\%$) per cent of the commissions involved in any such sale, or sales.

16. That the Second Party shall, in every instance, maintain the selling price of Doe Automatic Typewriters, as fixed by the First Party, from time to time, and shall offer no discount, rebate, or any other inducement, that would, directly or indirectly, affect the selling price of any Doe Automatic Typewriter; and, if the Second Party shall violate any of the provisions of this article, then, and in that event, the First Party shall have the right to abrogate this contract, by giving ten (10) days' written notice to that effect to the Second Party.

17. That the Second Party shall make not less than twenty (20) bona fide sales each month; and, in the event of his failure to do so, then, and in that event, the First Party may, at its option, abrogate this contract, by giving ten (10) days' written notice to that effect to the Second Party.

18. That the First Party shall promptly furnish the Second Party with the names of all persons inquiring about Doe Automatic Typewriters from the sales territory herein granted to the Second Party, and further agrees that no Doe Automatic Typewriter shall be sold in the said sales territory herein granted to the Second Party, unless commission on any such sale, or sales, shall be paid to the Second Party, in accordance with the provisions of this agreement.

19. That, if the First Party shall exercise any of its options to abrogate this contract, as hereinbefore provided for, then, and in any such event, the Second Party shall, upon the demand of the First Party to do so, forthwith assign and transfer to the First

Party, without any charge, any and all leases of all offices, or sales rooms, then used, or occupied, by the Second Party, in connection with the conduct of the sales agency herein provided for; and, upon demand of the First Party, shall sell to the First Party all of the furnishings and other equipment in any such office, or place of business, at cost, minus a deduction for depreciation, at the rate of twenty (20%) per cent for each year's use thereof, or for use during any part of a year; and, in any such event, the Second Party shall, upon the demand of the First Party, surrender and deliver to the First Party all files, correspondence and papers relating to the business of the sales agency herein granted to the Second Party.

20. That, contemporaneously with the execution of this agreement, and as security for the due and proper performance upon the part of the Second Party of all the terms and conditions herein to be performed by him, the Second Party shall deposit with the First Party the sum of fifteen thousand (\$15,000) dollars, and the Second Party may draw upon said fund not to exceed the rate of ten (10%) per cent, during each month that this contract shall be in full force and effect; but, if this contract shall be cancelled, before the whole of said deposit shall be withdrawn by the Second Party, the First Party shall refund to the Second Party the balance of the deposit then in the possession of the First Party.

21. That, if the Second Party shall comply with all of the terms and conditions of this agreement, then, and in that event, this contract shall continue in full force and effect from year to year, and, upon the termination of this contract, by either party, the Second Party shall make no claim, or claims, of any nature whatsoever, except for commissions due on accepted sales and for the balance of any moneys then on deposit with the First Party.

IN WITNESS WHEREOF, the First Party has signed this agreement, by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

John Doe Corporation,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

No. 356.

Agreement of owner of real estate retaining attorney upon contingent basis, to recover award in condemnation proceedings.⁶

New York City,
January 5, 1923.

Mr. Richard Roe,
No. 11½ Broadway,
New York City.

Dear Sir:

I, the undersigned, being the owner of property affected by the opening of Whiteacre Avenue, in the Borough of Manhattan, New York City, hereby authorize you to represent my interests before the Commissioners of Estimate and Assessment in such proceeding, and elsewhere; and I hereby employ you to take all necessary proceedings to secure for me as large an award as possible for the land and buildings belonging to me, which are, or may be, taken in the course of such proceeding.

I hereby agree to pay you, for your services, ten (10%) per cent of any award that may be obtained by me, for said lands and buildings, or any part thereof; provided, however, that you shall be entitled to receive no compensation for any services performed by you, if no award shall be made to me.

Yours very truly,
John Doe,
No. 37½ Broadway,
New York City.

I hereby accept the above retainer.

Dated, New York City, January 5, 1923.

Richard Roe.

No. 357.

Power of attorney to execute commercial paper.⁷

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, do hereby constitute

⁶Adapted from *Martin v. Camp* (1916), 219 N. Y. 170, 114 N. E. 46; re-argument denied (1916), 219 N. Y. 627, 114 N. E. 1072.

⁷Cf. *Porges v. U. S. Mortgage, etc. Co.* (1911), 203 N. Y. 181, 96 N. E. 424; *Bank v. Hay* (1906), 143 N. C. 326, 55 S. E. 811.

and appoint Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, my true and lawful attorney, for me, and in my name,

(a) To make, execute, endorse, accept, and deliver, any and all bills of exchange, checks, drafts, notes and trade acceptances; and

(b) To demand, sue for, recover, and receive of, and from, any person, firm, or corporation, all sums of money, which may become due, or payable, to me, by virtue of any bill of exchange, check, draft, note, or trade acceptance, so made, executed, endorsed, accepted and delivered for me, and in my name, by my said attorney; and

(c) To pay all sums of money, which shall, at any time, or times, hereafter be owing by me, upon any such bill of exchange, check, draft, note, or trade acceptance, so made, executed, endorsed, accepted and delivered for me, and in my name, by my said attorney; and

(d) To appear, answer and defend any and all suits whatsoever, which shall be commenced against me upon any such bill of exchange, check, note, draft, or trade acceptance, so made, executed, endorsed, accepted and delivered for me, and in my name, by my said attorney; and

(e) In such manner as my said attorney shall think fit, to adjust, compromise, submit to arbitration, and settle, any claim, or suit, which hereafter shall, or may, be pending against me upon any such bill of exchange, check, draft, note, or trade acceptance, so made, executed, endorsed, accepted and delivered for me, and in my name, by my said attorney; and

(f) Generally, to do, execute and perform any and all acts and deeds, which my said attorney may deem necessary, or expedient, in, or about, the premises.

And I, the said John Doe, do hereby ratify all that my said attorney may lawfully do, or cause to be done, in, or about, the premises, by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

No. 358.

Power of attorney to collect debts of a business.⁸

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, do hereby constitute and appoint Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, my true and lawful attorney, for me, and in my name,

(a) To demand, receive, sue for, and collect, all claims, debts, moneys and demands whatsoever, now due, or which may hereafter become due, to me, on account of the business now carried on by me, as a dealer in provisions, at No. 11½ Broadway, Borough of Manhattan, New York City; and

(b) To make, execute and deliver receipts, releases, or other discharges, for the same, under seal, or otherwise; and

(c) Upon the nonpayment of any such claim, debt, money, or demand whatsoever, to begin, conduct and prosecute any action, suit, or other proceeding whatsoever, for recovering and compelling the payment thereof; and

(d) In such manner as my said attorney shall think fit, to adjust, compromise, submit to arbitration, and settle, any such claim, debt and demand whatsoever, and any and all actions, or suits, or proceedings, in respect thereof; and

(e) To appoint, in his place and stead, and as his substitute, one attorney, or more, for me, with full power of revocation; and

(f) Generally, to do and perform all acts and things, which he may deem expedient, or necessary, in the premises, or any of them, as fully as I, the said John Doe, could do, if personally present.

And I, the said John Doe, hereby ratify and confirm whatsoever my said attorney, the said Richard Roe, or his substitute, shall lawfully do, or cause to be done, in, or about, the premises, by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

⁸ Cf. *Ryan v. Tudor* (1884), 31 Kan. 366, 2 Pac. 797; *Sier v. Bache* (1894), 7 Misc. 165, 27 N. Y. Supp. 255.

No. 359.**Power of attorney to collect dividends.⁹**

KNOW ALL MEN, that I, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, do hereby constitute and appoint Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, my true and lawful attorney, for me, and in my name,

(a) To demand, receive and sue for any and all dividends, which may be declared upon any shares of the common stock of Doe Manufacturing Co., Inc., which now, or hereafter, may stand in my name upon the books of said company; and

(b) To make, execute and deliver any receipt, or receipts therefor.

And I, the said John Doe, hereby ratify and confirm all that my said attorney shall lawfully do, by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

No. 360.**Power of attorney to manage mines.¹⁰**

KNOW ALL MEN, that we, John Doe Co., Inc., a corporation, duly organized under the laws of the State of New York, and having our principal office at No. 11½ Broadway, Borough of Manhattan, New York City, do hereby constitute and appoint Richard Roe, residing at No. 11½ Main Street, Salt Lake City, Utah, our true and lawful attorney, to take possession of, and carry on, and manage, the workings of, the mine, or mines, belonging to John Doe Co., Inc., and, for that purpose,

(a) to appoint officers, clerks, workmen, and others, and to remove them and appoint others, in their place; and

(b) to pay and allow to the persons to be so employed such salaries, wages, or other remuneration, as he shall think fit; and

⁹ Cf. *Winer v. Blytheville Bank* (1909), 89 Ark. 435, 117 S. W. 232, 131 Am. St. Rep. 102.

¹⁰ Adapted from *Davis v. Patrick* (1886), 122 U. S. 138, 7 Sup. Ct. Rep. 1102, 30 Law ed. 1090.

(c) to ask, demand, sue for, recover, and receive of, and from, all persons and bodies politic or corporate, and to pay, transfer, and deliver to the same, respectively, all sums of money, stocks, funds, interests, dividends, debts, dues, effects, and things, now owing, or payable to John Doe Co., Inc., or which shall, at any time, or times, hereafter be owing, or belong to John Doe Co., Inc., by virtue of any security, or upon any balance of accounts, or otherwise howsoever, or any part thereof, respectively; and

(d) to give, sign and execute receipts, releases, and other discharges, for the same, respectively, and, on nonpayment, nontransfer, or nondelivery thereof, or of any part thereof, respectively, to commence, carry on, and prosecute any action, suit, or other proceeding whatsoever, for recovering and compelling the payment, transfer, or delivery thereof, respectively; and

(e) to settle, adjust, submit to arbitration, and compromise, all actions, suits, accounts, reckonings, claims and demands whatsoever, which now are, or hereafter shall, or may, be pending between John Doe Co., Inc., and any person, or persons, whomsoever, in such manner and in all respects, as the said Richard Roe shall think fit; and

(f) to sell and convert into money any goods, effects, or things, which now belong, or, at any time, or times, hereafter shall belong, to said John Doe Co., Inc.; and

(g) to enter into, make, sign, execute, and deliver, acknowledge, and perform any contract, agreement, writing, or thing that may, in the opinion of the said Richard Roe, be necessary, or proper to be entered into, made, or signed, sealed, executed, delivered, acknowledged, or performed, for effectuating the purposes aforesaid, or any of them; and

(h) for all, or any, of the purposes of these presents, to use the name of John Doe Co., Inc.; and

(i) generally, to do, execute, and perform any other act, deed, matter, or thing, whatsoever, which ought to be done, executed, or performed, or which, in the opinion of the said Richard Roe, ought to be done, executed, or performed, in and about, the concerns, engagements and business of John Doe Co., Inc., of every nature and kind whatsoever, as fully and effectually as John Doe Co., Inc., could do, if it were personally present.

And we, John Doe Co., Inc., do hereby agree to, and hereby do, ratify and confirm all and whatsoever the said Richard Roe shall

lawfully do, or cause to be done, in, or about, the premises, by virtue of these presents.

IN WITNESS WHEREOF, the said John Doe Co., Inc., has signed this instrument, by its President, thereunto duly authorized, and has caused its corporate seal to be affixed, attested by its Secretary, this 5th day of January, 1923.

John Doe Co., Inc.,

By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

No. 361.

Power of attorney to manage, lease and sell real estate.¹¹

KNOW ALL MEN, that I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City, do hereby constitute and appoint Richard Roe, residing at No. 371½ Broadway, Borough of Manhattan, New York City, my true and lawful attorney, for me, and in my name,

(a) To take possession of any lands, buildings, tenements, or other structures, or any part, or parts, thereof, which, while belonging to me, may become vacant, or unoccupied, or to the possession whereof I may be entitled; and

(b) To ask, collect, and receive any rents, profits, or income, of any such lands, buildings, houses, or other structures, or of any part, or parts, thereof; and

(c) To make, execute and deliver any deed, mortgage, or lease, in respect of any such lands, buildings, houses, or other structures, or any part, or parts, thereof; and

(d) To manage any of such lands, and to manage, repair, rebuild, or reconstruct, any buildings, houses, or other structures, or any part, or parts, thereof, which may now, or hereafter, be erected upon any of such lands, and

(e) To hire and pay any clerks, workmen, and others, necessary to, or useful in and about, the exercise of the foregoing powers, or any of them; and

¹¹ *Of. Penfold v. Warner* (1893), 96 Mich. 179, 55 N. W. 680, 35 Am. St. Rep. 591.

(f) In such manner as my said attorney shall think fit, to begin, prosecute, adjust, compromise, submit to arbitration, and settle, all suits, or proceedings, which hereafter shall, or may, be pending between myself and any person, firm, or corporation, in respect of, or arising out of any of, the subject-matters of these presents, or in respect of any of the powers herein conferred upon my said attorney; and

(g) Generally to do, execute and perform any other act, matter, or thing, whatsoever, which, in the opinion of my said attorney, ought to be done, executed, or performed, in and about the premises, as fully as I, the said John Doe, could do, if personally present.

And I, the said John Doe, do hereby ratify and confirm all that my said attorney shall lawfully do, or cause to be done, by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of
John Jones.

No. 362.

Power of attorney to sell real estate owned jointly.¹²

KNOW ALL MEN, that we, John Doe and Richard Roe, both residing at No. 11½ Broadway, Borough of Manhattan, New York City, do hereby constitute and appoint Henry Koe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, our true and lawful attorney, for us, and in our name,

(a) To grant, bargain and sell all lands in and to which we are, or may be, in any way, entitled, or interested; and

(b) To make, execute and deliver good and sufficient deeds thereto; and

(c) To receive payment therefor.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this 5th day of January, 1923.

John Doe (L.S.);

In the presence of Richard Roe (L.S.).

John Jones,

¹² Adapted from *Gilbert v. How* (1890), 45 Minn. 121, 47 N. W. 643, 22 Am. St. Rep. 724.

No. 363.**Power of attorney to sell shares of stock.¹³**

KNOW ALL MEN, that I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City, do hereby constitute and appoint Richard Roe, residing at No. 371½ Broadway, Borough of Manhattan, New York City, my true and lawful attorney, for me, and in my name,

(a) To sell, assign, transfer, and deliver, all of my shares of capital stock of the Doe Mining & Leasing Co., a corporation, duly organized under the laws of the State of Colorado; and

(b) To receive payment therefor from the buyer, or buyers, thereof; and

(c) To make, execute and deliver receipts for any such payment.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones.

No. 364.**Power of attorney to solicit and accept subscriptions and collect the proceeds thereof.¹⁴**

KNOW ALL MEN, that we, John Doe Corporation, a corporation, duly organized under the laws of the State of New York, and having our principal office at No. 111½ Broadway, Borough of Manhattan, New York City, do hereby constitute and appoint Richard Roe, residing at No. 371½ Broadway, Borough of Manhattan, New York City, our true and lawful attorney, for us, and in our name,

(a) To solicit, receive and obtain and accept any and all subscriptions, or offers, to purchase shares of our capital stock; and

(b) To receive payment, or payments, therefor, or on account thereof; and, upon receiving any payment, or payments, to make, execute, and deliver a receipt, or receipts, therefor; and

(c) To ask for, obtain, and receive any check, note, or other instrument for the payment of money, which may be made payable

¹³ Adapted from *Servant v. McCampbell* (1909), 46 Colo. 292.

¹⁴ Cf. *Central Trust Co. v. Folsom* (1901), 167 N. Y. 285, 60 N. E. 599.

to our order, as payment for, or on account of, any such subscription, or offer, to purchase our shares of capital stock; and

(d) Upon receiving any such check, note, or other instrument for the payment of money, to endorse our name thereon, and to deposit the same, or any of them, and to receive and collect the proceeds thereof.

And we, John Doe Corporation, hereby ratify and confirm all that the said Richard Roe may do, or cause to be done, by virtue of this power of attorney.

IN WITNESS WHEREOF, the John Doe Corporation has caused this instrument to be executed, by its President, thereunto duly authorized, and its corporate seal to be hereunto affixed, attested by its Secretary, this 5th day of January, 1923.

John Doe Corporation,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

No. 365.

Power of attorney—unrestricted.¹⁵

KNOW ALL MEN, that I, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City, do hereby constitute and appoint Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, my true and lawful attorney, for me, and in my name,

(a) To ask, demand, sue for, recover, collect and receive all such sums of money, debts, accounts, interest, dividends, annuities and demands whatsoever, as now are, or hereafter shall become, due, owing, or payable, to me; and

(b) To make, execute and deliver acquittances, receipts, releases, or other discharges, therefor; and

(c) To purchase, receive, and take possession of all lands, tenements, and hereditaments, upon such terms, conditions and covenants as he may think proper; and

¹⁵ Adapted from *Muth v. Goddard* (1903), 28 Mont. 237, 72 Pac. 621, 98 Am. St. Rep. 553.

(d) To lease, bargain, transfer, convey, grant and mortgage all lands, tenements and hereditaments, upon such terms, conditions and covenants as he may think proper; and

(e) To buy, sell, mortgage, hypothecate, and, in every way and manner, deal in and with, goods, wares and merchandise, and choses in action; and

(f) To engage in, do and transact all and every kind of business that he may think proper; and

(g) To make, sign, execute, seal, acknowledge and deliver all such deeds, leases, and assignments of leases, covenants, indentures, agreements, hypothecations, bills of lading, bonds, notes, receipts, evidences of debt, releases, and satisfactions of mortgage, judgments, and other debts, and such other instruments of whatsoever kind and nature, as may be necessary, or proper, in the premises.

And I, the said John Doe, hereby ratify all that my said attorney may lawfully do, or cause to be done, by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 5th day of January, 1923.

John Doe (L.S.).

In the presence of

John Jones.

No. 366.

Power of attorney appointing substitutes, executed by agent.¹⁶

KNOW ALL MEN, that—

WHEREAS, John Doe, who resides at No. 111½ Broadway, Borough of Manhattan, New York City, did, under date of April 22, 1922, appoint Jane Doe, who resides at No. 111½ Broadway, Borough of Manhattan, New York City, his true and lawful attorney; and

WHEREAS, the said John Doe, by a power of attorney executed and delivered to me, the undersigned, on May 1, 1922, nominated, constituted and appointed me his true and lawful attorney; and

WHEREAS, I, the undersigned, by virtue of said power of attorney, did, on May 1, 1922, make, constitute and appoint Henry Koe, as substitute for me, to be the attorney for the said John Doe; and

¹⁶ Adapted from *Bradford Co. v. Dunn* (1919), 188 App. Div. 454, 176 N. Y. Supp. 834.

WHEREAS, the said power of attorney, made, executed and delivered to me by the said John Doe, as aforesaid, still is in full force and effect:

NOW, THEREFORE, I, the undersigned, Richard Roe, residing at No. 57½ Broadway, Borough of Manhattan, New York City, do hereby make, substitute and appoint John Smith and John Jones, who reside at No. 87½ Broadway, Borough of Manhattan, New York City, for me, to be the attorneys for the said John Doe, and in his name, to exercise the following powers vested in me by the said power of attorney, to wit:

(a) To revoke the power of attorney executed by the said John Doe, under date of April 22, 1922, whereby the aforesaid Jane Doe was appointed the true and lawful attorney of the said John Doe; and

(a) To revoke the appointment and substitution of Henry Koe, made and executed by me under date of May 1, 1922; and

(c) To appoint any person, or persons, as substitute, or substitutes, for me, the said Richard Roe, to be the attorney, or attorneys, of the said John Doe, and, in his name, to exercise all, or any, of the powers given to me in and by said power of attorney of May 1, 1922, hereinbefore mentioned; and

(d) To revoke, or withdraw, any such appointment, or substitution; and to exercise the powers of appointment, substitution and revocation, hereinbefore granted, at such time, and to such extent, and in such manner, as they, or either of them, shall deem proper and expedient.

IN WITNESS WHEREOF, I, the said Richard Roe, have hereunto set my hand and seal, this 5th day of January, 1923.

Richard Roe (L.S.).

In the presence of
Charles Brown.

CHAPTER XX
PRINCIPAL AND CONTRACTOR

Section 1.—Agreements and Bonds.

(A).—The Standard Documents of The American Institute of Architects.

- No. 367—The standard form of agreement between contractor and owner, for use when a stipulated sum forms the basis of payment.
- No. 368—The general conditions of the contract.
- No. 369—The standard form of bond, for use in connection with the third edition of the standard form of agreement and general conditions of the contract.
- No. 370—The standard form of agreement between contractor and subcontractor, for use in connection with the third edition of the standard form of agreement and general conditions of the contract.
- No. 371—The standard form of acceptance of subcontractor's proposal, for use in connection with the third edition of the standard form of agreement and general conditions of the contract.

(B).—Agreement between Principal and Contractor.

- No. 372—Agreement between owner and contractor providing for wrecking and removing building.

Section 2.—Miscellany.

- No. 373—Release of liens by contractor.
- No. 374—Clause indemnifying owner against injury to persons or property.
- No. 375—Clause providing that acceptance of last payment shall operate as release.

- No. 376—Clause providing that, upon contractor's breach, owner may complete building, and use contractor's materials and other property for the purpose, and providing for forfeiture of contractor's compensation.
- No. 377—Clause requiring approval of extra work.
- No. 378—Clause requiring contractor to furnish bond after execution of contract.
- No. 379—Clause transferring title to work and material to owner.

SECTION 1.—AGREEMENTS AND BONDS.

(A).—The Standard Documents of The American Institute of Architects.

No. 367.

The standard form of agreement between contractor and owner.¹

ISSUED BY THE AMERICAN INSTITUTE OF ARCHITECTS FOR USE WHEN
A STIPULATED SUM FORMS THE BASIS OF PAYMENT

The Standard Documents have received the approval of the National Association of Builders' Exchanges, the National Association of Master Plumbers, the National Association of Sheet Metal Contractors of the United States, the National Electrical Contractors' Association of the United States, the National Association of Marble Dealers, the Building Granite Quarries Association, the Building Trades Employers Association of the City of New York, and the Heating and Piping Contractors National Association.

Third edition, copyright 1915-1918 by the American Institute of Architects, The Octagon, Washington, D. C. This form is to be used only with the standard general conditions of the contract.

This agreement made the.....
day of.....in the year Nineteen Hundred and.....
by and between.....
.....

¹ Adopted by the American Institute of Architects, and reprinted by its permission.

hereinafter called the Contractor, and.....

.....hereinafter called the Owner,

WITNESSETH, that the Contractor and the Owner for the considerations hereinafter named agree as follows:

Article 1. The Contractor agrees to provide all the materials and to perform all the work shown on the drawings and described in the Specifications entitled

(Here insert the caption descriptive of the work as used in the Proposal, General Conditions, Specifications, and upon the Drawings.)

prepared by.....

acting as, and in these Contract Documents entitled the Architect, and to do everything required by the General Conditions of the Contract, the Specifications and the Drawings.

[PAGE 1]

Article 2. The Contractor agrees that the work under this Contract shall be substantially completed.....

(Here insert the date or dates of completion, and stipulations as to liquidated damages, if any.)

Article 3. The Owner agrees to pay the Contractor in current funds for the performance of the Contract

.....(\$.....) subject to additions and deductions as provided in the General Conditions of the Contract and to make payments on account thereof as provided therein, as follows: On or about the.....day of each month.....per cent of the value, proportionate to

the amount of the Contract, of labor and materials incorporated in the work up to the first day of that month as estimated by the Architect, less the aggregate of previous payments. On substantial completion of the entire work, a sum sufficient to increase the total payments to.....per cent of the contract price, and.....days thereafter, provided the work be fully completed and the Contract fully performed, the balance due under the Contract.

[PAGE 2]

Article 4. The Contractor and the Owner agree that the General Conditions of the Contract, the Specifications and the Drawings, together with this agreement, form the Contract, and that they are as fully a part of the Contract, as if hereto attached or herein repeated; and that the following is an exact enumeration of the Specifications and Drawings:

[PAGE 3]

The Contractor and the Owner for themselves, their successors, executors, administrators and assigns, hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF they have executed this agreement, the day and year first above written.

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TITLE PAGE

TITLE AND LOCATION OF THE WORK:

NAME AND ADDRESS OF THE OWNER:

NAME AND ADDRESS OF THE ARCHITECT:

TITLES OF DOCUMENTS BOUND HEREWITH AND ENUMERATION
OF DRAWINGS:

No. 368.

The general conditions of the contract.²

STANDARD FORM OF THE AMERICAN INSTITUTE OF ARCHITECTS

The Standard Documents have received the approval of the National Association of Builders' Exchanges, the National Association of Master Plumbers, the National Association of Sheet Metal Contractors of the United States, the National Electrical Contractors' Association of the United States, the National Association of Marble Dealers, the Building Granite Quarries Association, the Building Trades Employers Association of the City of New York, and the Heating and Piping Contractors National Association.

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² Adopted by the American Institute of Architects, and reprinted by its permission.

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Article 1. *Principles and Definitions:*

- (a) The Contract Documents consist of the Agreement, the General Conditions of the Contract, the Drawings and Specifications, including all modifications thereof incorporated in the documents before their execution. These form the Contract.
- (b) The Owner, the Contractor and the Architect are those named as such in the Agreement. They are treated throughout the Contract Documents as if each were of the singular number and masculine gender.
- (c) The term Subcontractor, as employed herein, includes only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.
- (d) Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered mail to the last business address known to him who gives the notice.
- (e) The term "work" of the Contractor or Subcontractor includes labor or materials or both.
- (f) All time limits stated in the Contract Documents are of the essence of the contract.
- (g) The law of the place of building shall govern the construction of this contract.

Article 2. *Execution, Correlation and Intent of Documents.*—The Contract Documents shall be signed in duplicate by the Owner

and Contractor. In case of failure to sign the General Conditions, Drawings or Specifications the Architect shall identify them.

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the documents is to include all labor and materials reasonably necessary for the proper execution of the work. It is not intended, however, that materials or work not covered by or properly inferable from any heading, branch, class or trade of the specifications shall be supplied unless distinctly so noted on the drawings. Materials or work described in words which so applied have a well known technical or trade meaning shall be held to refer to such recognized standards.

Article 3. *Detail Drawings and Instructions.*—The Architect shall furnish, with reasonable promptness, additional instructions, by means of drawings or otherwise, necessary for the proper execu-

[PAGE 1]

tion of the work. All such drawings and instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom. The work shall be executed in conformity therewith and the Contractor shall do no work without proper drawings and instructions. In giving such additional instructions, the Architect shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purposes of the building.

The Contractor and the Architect, if either so requests, shall jointly prepare a schedule, subject to change from time to time in accordance with the progress of the work, fixing the dates at which the various detail drawings will be required, and the Architect shall furnish them in accordance with that schedule. Under like conditions, a schedule shall be prepared, fixing the dates for the submission of shop drawings, for the beginning of manufacture and installation of materials and for the completion of the various parts of the work.

Article 4. *Copies Furnished.*—Unless otherwise provided in the Contract Documents the Architect will furnish to the Contractor, free of charge, all copies of drawings and specifications reasonably necessary for the execution of the work.

Article 5. *Shop Drawings.*—The Contractor shall submit, with such promptness as to cause no delay in his own work or in that of any other contractor, two copies of all shop or setting drawings

and schedules required for the work of the various trades and the Architect shall pass upon them with reasonable promptness. The Contractor shall make any corrections required by the Architect, file with him two corrected copies and furnish such other copies as may be needed. The Architect's approval of such drawings or schedules shall not relieve the Contractor from responsibility for deviations from drawings or specifications, unless he has in writing called the Architect's attention to such deviations at the time of submission, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules.

Article 6. *Drawings and Specifications on the Work.*—The Contractor shall keep one copy of all drawings and specifications on the work, in good order, available to the Architect and to his representatives.

Article 7. *Ownership of Drawings and Models.*—All drawings, specifications and copies thereof furnished by the Architect are his property. They are not to be used on other work and, with the exception of the signed contract set, are to be returned to him on request, at the completion of the work. All models are the property of the Owner.

Article 8. *Samples.*—The Contractor shall furnish for approval all samples as directed. The work shall be in accordance with approved samples.

Article 9. *The Architect's Status.*—The Architect shall have general supervision and direction of the work. He is the agent of the Owner only to the extent provided in the Contract Documents and when in special instances he is authorized by the Owner so to act, and in such instances he shall, upon request, show the Contractor written authority. He has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the Contract.

As the Architect is, in the first instance, the interpreter of the conditions of the Contract and the judge of its performance, he shall side neither with the Owner nor with the Contractor, but shall use his powers under the contract to enforce its faithful performance by both.

In case of the termination of the employment of the Architect, the Owner shall appoint a capable and reputable Architect whose status under the contract shall be that of the former Architect.

Article 10. *The Architect's Decisions.*—The Architect shall,

within a reasonable time, make decisions on all claims of the Owner or Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.

The Architect's decisions, in matters relating to artistic effect, shall be final, if within the terms of the Contract Documents.

Except as above or as otherwise expressly provided in these General Conditions or in the specifications, all the Architect's decisions are subject to arbitration.

Article 11. *Foreman, Supervision.*—The Contractor shall keep on his work, during its progress, a competent foreman and any necessary assistants, all satisfactory to the Architect. The foreman shall not be changed except with the consent of the Architect, unless the foreman proves to be unsatisfactory to the Contractor and ceases to be in his employ. The foreman shall represent the

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Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor. Important directions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed on written request in each case.

The Contractor shall give efficient supervision to the work, using his best skill and attention. He shall carefully study and compare all drawings, specifications and other instructions and shall at once report to the Architect any error, inconsistency or omission which he may discover.

Article 12. *Materials, Appliances, Employees.*—Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light and power necessary for the execution of the work.

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

The Contractor shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

Article 13. *Inspection of Work.*—The Owner, the Architect and their representatives shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection.

If the specifications, the Architect's instructions, laws, ordi-

nances or any public authority require any work to be specially tested or approved, the Contractor shall give the Architect timely notice of its readiness for inspection, and if the inspection is by another authority than the Architect, of the date fixed for such inspection. Inspections by the Architect shall be promptly made. If any such work should be covered up without approval or consent of the Architect, it must, if required by the Architect, be uncovered for examination at the Contractor's expense.

Re-examination of questioned work may be ordered by the Architect. If such work be found in accordance with the contract, the Owner shall pay the cost of re-examination and replacement. If such work be found not in accordance with the contract, through the fault of the Contractor, the Contractor shall pay such cost, unless he shall show that the defect in the work was caused by another contractor, and in that event the Owner shall pay such cost.

Article 14. *Correction of Work Before Final Payment.*—The Contractor shall promptly remove from the premises all materials condemned by the Architect as failing to conform to the Contract, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

If the Contractor does not remove such condemned work and materials within a reasonable time, fixed by written notice, the Owner may remove them and may store the material at the expense of the Contractor. If the Contractor does not pay the expense of such removal within five days thereafter, the Owner may, upon ten days' written notice, sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

Article 15. *Deductions for Uncorrected Work.*—If the Architect and Owner deem it inexpedient to correct work injured or done not in accordance with the Contract, the difference in value together with a fair allowance for damage shall be deducted.

Article 16. *Correction of Work After Final Payment.*—Neither the final certificate nor payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility

for faulty materials or workmanship and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of two years from the time of installation. The Owner shall give notice of observed defects with reasonable promptness. All questions arising under this Article shall be decided under Articles 10 and 45.

Article 17. *Protection of Work and Property.*—The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury arising in connection with this Contract. He shall make good any such damage or injury, except such as may be directly due to errors in the Contract Documents. He shall adequately protect adjacent property as provided by law and the Contract Documents.

Article 18. *Emergencies.*—In an emergency affecting the safety of life or of the structure or of adjoining property, not considered by the Contractor as within the provisions of Article 17, then the Contractor, without special instruction or authorization

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from the Architect or Owner, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury and he shall so act, without appeal, if so instructed or authorized. Any compensation claimed to be due to him therefor shall be determined under Articles 10 and 45 regardless of the limitations in Article 25 and in the second paragraph of Article 24.

Article 19. *Contractor's Liability Insurance.*—The Contractor shall maintain such insurance as will protect him from claims under workmen's compensation acts and from any other claims for damages for personal injury, including death, which may arise from operations under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. Certificates of such insurance shall be filed with the Owner, if he so require, and shall be subject to his approval for adequacy of protection.

Article 20. *Owner's Liability Insurance.*—The Owner shall maintain such insurance as will protect him from his contingent liability for damages for personal injury, including death, which may arise from operations under this contract.

Article 21. *Fire Insurance.*—The Owner shall effect and maintain fire insurance upon the entire structure on which the work of this contract is to be done and upon all materials, in or adjacent

thereto and intended for use thereon, to at least eighty per cent of the insurable value thereof. The loss, if any, is to be made adjustable with and payable to the Owner as Trustee for whom it may concern.

All policies shall be open to inspection by the Contractor. If the Owner fails to show them on request or if he fails to effect or maintain insurance as above, the Contractor may insure his own interest and charge the cost thereof to the Owner. If the Contractor is damaged by failure of the Owner to maintain such insurance, he may recover under Art. 39.

If required in writing by any party in interest, the Owner as Trustee shall, upon the occurrence of loss, give bond for the proper performance of his duties. He shall deposit any money received from insurance in an account separate from all his other funds and he shall distribute it in accordance with such agreement as the parties in interest may reach, or under an award of arbitrators appointed, one by the Owner, another by joint action of the other parties in interest, all other procedure being in accordance with Art. 45. If after loss no special agreement is made, replacement of injured work shall be ordered under Art. 24.

The Trustee shall have power to adjust and settle any loss with the insurers unless one of the contractors interested shall object in writing within three working days of the occurrence of loss and thereupon arbitrators shall be chosen as above. The Trustee shall in that case make settlement with the insurers in accordance with the directions of such arbitrators, who shall also, if distribution by arbitration is required, direct such distribution.

Article 22. *Guaranty Bonds.*—The Owner shall have the right to require the Contractor to furnish bond covering the faithful performance of the contract and the payment of all obligations arising thereunder, in such form as the Owner may prescribe and with such sureties as he may approve. If such bond is required by instructions given previous to the receipt of bids, the premium shall be paid by the Contractor; if subsequent thereto, it shall be paid by the Owner.

Article 23. *Cash Allowances.*—The Contractor shall include in the contract sum all allowances named in the Contract Documents and shall cause the work so covered to be done by such contractors and for such sums as the Architect may direct, the contract sum being adjusted in conformity therewith. The Contractor declares

that the contract sum includes such sums for expenses and profit on account of cash allowances as he deems proper. No demand for expenses or profit other than those included in the contract sum shall be allowed. The Contractor shall not be required to employ for any such work persons against whom he has a reasonable objection.

Article 24. *Changes in the Work.*—The Owner, without invalidating the contract, may make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly. All such work shall be executed under the conditions of the original contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

Except as provided in Articles 3, 9 and 18, no change shall be made unless in pursuance of a written order from the Owner signed or countersigned by the Architect, or a written order from the Architect stating that the Owner has authorized the change, and no claim for an addition to the contract sum shall be valid unless so ordered.

The value of any such change shall be determined in one or more of the following ways:

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- (a) By estimate and acceptance in a lump sum.
- (b) By unit prices named in the contract or subsequently agreed upon.
- (c) By cost and percentage or by cost and a fixed fee.
- (d) If none of the above methods is agreed upon, the Contractor, provided he receive an order as above, shall proceed with the work, no appeal to arbitration being allowed from such order to proceed.

In cases (c) and (d), the Contractor shall keep and present in such form as the Architect may direct, a correct account of the net cost of labor and materials, together with vouchers. In any case, the Architect shall certify to the amount, including a reasonable profit, due to the Contractor. Pending final determination of value, payments on account of changes shall be made on the Architect's certificate.

Article 25. *Claims for Extras.*—If the Contractor claims that any instructions, by drawings or otherwise, involve extra cost under this contract, he shall give the Architect written notice thereof be-

fore proceeding to execute the work and, in any event, within two weeks of receiving such instructions, and the procedure shall then be as provided in Art. 24. No such claim shall be valid unless so made.

Article 26. *Applications for Payments.*—The Contractor shall submit to the Architect an application for each payment and, if required, receipts or other vouchers showing his payments for materials and labor, including payments to subcontractors as required by Article 44.

If payments are made on valuation of work done, such application shall be submitted at least ten days before each payment falls due, and, if required, the Contractor shall, before the first application, submit to the Architect a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the contract, divided so as to facilitate payments to subcontractors in accordance with Article 44 (*e*), made out in such form and, if required, supported by such evidence as to its correctness, as the Architect may direct. This schedule, when approved by the Architect, shall be used as a basis for certificates of payment, unless it be found to be in error. In applying for payments, the Contractor shall submit a statement based upon this schedule and, if required, itemized in such form and supported by such evidence as the Architect may direct, showing his right to the payment claimed.

Article 27. *Certificates and Payments.*—If the Contractor has made application as above, the Architect shall, not later than the date when each payment falls due, issue to the Contractor a certificate for such amount as he decides to be properly due.

No certificate issued nor payment made to the Contractor, nor partial or entire use or occupancy of the work by the Owner shall be an acceptance of any work or materials not in accordance with this contract. The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, otherwise than under Articles 16 and 29 of these conditions or under requirement of the specifications, and of all claims by the Contractor, except those previously made and still unsettled.

Should the Owner fail to pay the sum named in any certificate of the Architect or in any award by arbitration, upon demand when due, the Contractor shall receive, in addition to the sum named in

the certificate, interest thereon at the legal rate in force at the place of building.

Article 28. *Payments Withheld.*—The Architect may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate for payment to such extent as may be necessary to protect the Owner from loss on account of:

- (a) Defective work not remedied.
- (b) Claims filed or reasonable evidence indicating probable filing of claims.
- (c) Failure of the Contractor to make payments properly to subcontractors or for material or labor.
- (d) A reasonable doubt that the contract can be completed for the balance then unpaid.
- (e) Damage to another contractor under Article 40.

When all the above grounds are removed certificates shall at once be issued for amounts withheld because of them.

Article 29. *Liens.*—Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Owner a complete release of all liens arising out of this contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as he has knowledge or information the releases and receipts include all the labor and material for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in

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full, furnish a bond satisfactory to the Owner, to indemnify him against any claim by lien or otherwise. If any lien or claim remain unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and a reasonable attorney's fee.

Article 30. *Permits and Regulations.*—The Contractor shall obtain and pay for all permits and licenses, but not permanent easements, and shall give all notices, pay all fees and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Architect in writing, and any necessary changes shall be adjusted under Article 24. If the Contractor performs any work knowing it to be contrary to such laws, ordi-

nances, rules and regulations, and without such notice to the Architect, he shall bear all costs arising therefrom.

Article 31. *Royalties and Patents.*—The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when the product of a particular manufacturer or manufacturers is specified, but if the Contractor has information that the article specified is an infringement of a patent he shall be responsible for such loss unless he promptly gives such information to the Architect or Owner.

Article 32. *Use of Premises.*—The Contractor shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits or directions of the Architect and shall not unreasonably encumber the premises with his materials.

The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

The Contractor shall enforce the Architect's instructions regarding signs, advertisements, fires and smoking.

Article 33. *Cleaning Up.*—The Contractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by his employees or work and at the completion of the work he shall remove all his rubbish from and about the building and all his tools, scaffolding and surplus materials and shall leave his work "broom clean" or its equivalent, unless more exactly specified. In case of dispute the Owner may remove the rubbish and charge the cost to the several contractors as the Architect shall determine to be just.

Article 34. *Cutting, Patching and Digging.*—The Contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors shown upon, or reasonably implied by, the Drawings and Specifications for the completed structure and he shall make good after them, as the Architect may direct.

Any cost caused by defective or ill-timed work shall be borne by the party responsible therefor.

The Contractor shall not endanger any work by cutting, digging

or otherwise and shall not cut or alter the work of any other contractor save with the consent of the Architect.

Article 35. Delays.—If the Contractor be delayed in the completion of the work by any act or neglect of the Owner or the Architect, or of any employee of either, or by any other contractor employed by the Owner, or by changes ordered in the work, or by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Architect pending arbitration, or by any cause which the Architect shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Architect may decide.

No such extension shall be made for delay occurring more than seven days before claim therefor is made in writing to the Architect. In the case of a continuing cause of delay, only one claim is necessary.

If no schedule is made under Art. 3, no claim for delay shall be allowed on account of failure to furnish drawings until two weeks after demand for such drawings and not then unless such claim be reasonable.

This article does not exclude the recovery of damages for delay by either party under Article 39 or other provisions in the contract documents.

Article 36. Owner's Right to Do Work.—If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this contract, the Owner, after three days' written

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notice to the Contractor, may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor; provided, however, that the Architect shall approve both such action and the amount charged to the Contractor.

Article 37. Owner's Right to Terminate Contract.—If the Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should, except in cases recited in Article 35, persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws,

ordinances or the instructions of the Architect, or otherwise be guilty of a substantial violation of any provision of the contract, then the Owner, upon the certificate of the Architect that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor seven days' written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation to the Architect for his additional services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Architect.

Article 38. *Contractor's Right to Stop Work or Terminate Contract.*—If the work should be stopped under an order of any court, or other public authority, for a period of three months, through no act or fault of the Contractor or of any one employed by him, or if the Owner should fail to pay to the Contractor, within seven days of its maturity and presentation, any sum certified by the Architect or awarded by arbitrators, then the Contractor may, upon three days' written notice to the Owner and the Architect, stop work or terminate this contract and recover from the Owner payment for all work executed and any loss sustained upon any plant or material and reasonable profit and damages.

Article 39. *Damages.*—If either party to this contract should suffer damage in any manner because of any wrongful act or neglect of the other party or of any one employed by him, then he shall be reimbursed by the other party for such damage.

Claims under this clause shall be made in writing to the party liable within a reasonable time of the first observance of such damage and not later than the time of final payment, except in case of claims under Article 16, and shall be adjusted by agreement or arbitration.

Article 40. *Mutual Responsibility of Contractors.*—Should the Contractor cause damage to any other contractor on the work, the Contractor agrees, upon due notice, to settle with such contractor

by agreement or arbitration, if he will so settle. If such other contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor, who shall defend such proceedings at the Owner's expense and, if any judgment against the Owner arise therefrom, the Contractor shall pay or satisfy it and pay all costs incurred by the Owner.

Article 41. *Separate Contracts.*—The Owner reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.

If any part of the Contractor's work depends for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report to the Architect any defects in such work that render it unsuitable for such proper execution and results. His failure so to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other contractor's work after the execution of his work.

To insure the proper execution of his subsequent work the Contractor shall measure work already in place and shall at once report to the Architect any discrepancy between the executed work and the drawings.

Article 42. *Assignment.*—Neither party to the Contract shall assign the contract without the written consent of the other, nor

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shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

Article 43. *Subcontracts.*—The Contractor shall, as soon as practicable after the signature of the contract, notify the Architect in writing of the names of subcontractors proposed for the principal parts of the work and for such others as the Architect may direct and shall not employ any that the Architect may within a reasonable time object to as incompetent or unfit.

If the Contractor has submitted before signing the contract a list of subcontractors and the change of any name on such list is required or permitted after signature of agreement, the contract

price shall be increased or diminished by the difference between the two bids.

The Architect shall, on request, furnish to any subcontractor, wherever practicable, evidence of the amounts certified to on his account.

The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the contract documents shall create any contractual relation between any subcontractor and the Owner.

Article 44. *Relations of Contractor and Subcontractor.*—The Contractor agrees to bind every subcontractor and every subcontractor agrees to be bound, by the terms of the General Conditions, Drawings and Specifications, as far as applicable to his work, including the following provisions of this Article, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Owner or Architect. This does not apply to minor subcontracts.

The Subcontractor agrees—

- (a) To be bound to the Contractor by the terms of the General Conditions, Drawings and Specifications and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the Owner.
- (b) To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Article 26 of the General Conditions.
- (c) To make all claims for extras, for extensions of time and for damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the Owner, except that the time for making claims for extra cost as under Article 25 of the General Conditions is one week.

The Contractor agrees—

- (d) To be bound to the Subcontractor by all the obligations that the Owner assumes to the Contractor under the General Conditions, Drawings and Specifications and by all the provisions thereof affording remedies and redress to the Contractor from the Owner.

- (e) To pay the Subcontractor, upon the issuance of certificates, if issued under the schedule of values described in Article 26 of the General Conditions, the amount allowed to the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's interest therein.
 - (f) To pay the Subcontractor, upon the issuance of certificates, if issued otherwise than as in (e), so that at all times his total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him.
 - (g) To pay the Subcontractor to such extent as may be provided by the Contract Documents or the subcontract, if either of these provides for earlier or larger payments than the above.
 - (h) To pay the Subcontractor on demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time the certificate should issue, even though the Architect fails to issue it for any cause not the fault of the Subcontractor.
 - (j) To pay the Subcontractor a just share of any fire insurance money received by him, the Contractor, under Article 21 of the General Conditions.
 - (k) To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the subcontract.
 - (l) That no claim for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first ten days of the calendar month following that in which the claim originated.
 - (m) To give the Subcontractor an opportunity to be present and to submit evidence in any arbitration involving his rights.
- [PAGE 8]
- (n) To name as arbitrator under Article 45 of the General Conditions the person nominated by the Subcontractor, if the sole cause of dispute is the work, materials, rights or responsibilities of the Subcontractor; or, if of the Subcontractor and any other subcontractor jointly, to name as such arbitrator the person upon whom they agree.

The Contractor and the Subcontractor agree that—

- (o) In the matter of arbitration, their rights and obligations and all procedure shall be analogous to those set forth in Article 45 of the General Conditions.

Nothing in this Article shall create any obligation on the part of the Owner to pay to or to see to the payment of any sums to any Subcontractor.

Article 45. *Arbitration.*—Subject to the provisions of Article 10, all questions in dispute under this contract shall be submitted to arbitration at the choice of either party to the dispute. The Contractor agrees to push the work vigorously during arbitration proceedings.

The demand for arbitration shall be filed in writing with the Architect, in the case of an appeal from his decision, within ten days of its receipt and in any other case within a reasonable time after cause thereof and in no case later than the time of final payment, except as to questions arising under Article 16. If the Architect fails to make a decision within a reasonable time, an appeal to arbitration may be taken as if his decision had been rendered against the party appealing.

No one shall be nominated or act as an arbitrator who is in any way financially interested in this contract or in the business affairs of either the Owner, Contractor or Architect.

The general procedure shall conform to the laws of the State in which the work is to be erected. Unless otherwise provided by such laws, the parties may agree upon one arbitrator; otherwise there shall be three, one named, in writing, by each party to this contract, to the other party and to the Architect, and the third chosen by these two arbitrators, or if they fail to select a third within ten days, then he shall be chosen by the presiding officer of the Bar Association nearest to the location of the work. Should the party demanding arbitration fail to name an arbitrator within ten days of his demand, his right to arbitration shall lapse. Should the other party fail to choose an arbitrator within said ten days, then such presiding officer shall appoint such arbitrator. Should either party refuse or neglect to supply the arbitrators with any papers or information demanded in writing, the arbitrators are empowered by both parties to proceed *ex parte*.

The arbitrators shall act with promptness. If there be one arbitrator his decision shall be binding; if three the decision of any

two shall be binding. Such decision shall be a condition precedent to any right of legal action, and wherever permitted by law it may be filed in Court to carry it into effect.

The arbitrators, if they deem that the case demands it, are authorized to award to the party whose contention is sustained such sums as they shall deem proper for the time, expense and trouble incident to the appeal and, if the appeal was taken without reasonable cause, damages for delay. The arbitrators shall fix their own compensation, unless otherwise provided by agreement, and shall assess the costs and charges of the arbitration upon either or both parties.

The award of the arbitrators must be in writing and, if in writing, it shall not be open to objection on account of the form of the proceedings or the award, unless otherwise provided by the laws of the State in which the work is to be erected.

In the event of such laws providing on any matter covered by this article otherwise than as hereinbefore specified, the method of procedure throughout and the legal effect of the award shall be wholly in accordance with the said State laws, it being intended hereby to lay down a principle of action to be followed, leaving its local application to be adapted to the legal requirements of the place in which the work is to be erected.

[PAGE 9]

No. 369.

The standard form of bond for use in connection with the third edition of the standard form of agreement and general conditions of the contract.³

This form has been approved by the National Association of Builders' Exchanges, the National Association of Master Plumbers, the National Association of Sheet Metal Contractors of the United States, the National Electrical Contractors' Association of the United States, the National Association of Marble Dealers, and the Heating and Piping Contractors' National Association.

³ Adopted by the American Institute of Architects, and reprinted by its permission.

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Octagon, Washington, D. C.

KNOW ALL MEN: That we.....
(Here insert the name and address or legal title
.....
of the Contractor.)

hereinafter called the Principal, and.....
(Here insert the name and address or
.....
legal title of one or more sureties.)

.....and

.....and

hereinafter called the Surety or Sureties, are held and firmly
bound unto

(Here insert the name and address or legal title of the Owner.)

hereinafter called the Owner, in the sum of

.....(\$.....)

for the payment whereof the Principal and the Surety or Sureties
bind themselves, their heirs, executors, administrators, successors
and assigns, jointly and severally, firmly, by these presents.

WHEREAS, the Principal has, by means of a written Agreement,
dated.....entered into a contract with the Owner for

.....
a copy of which Agreement is by reference made a part hereof;

Now, THEREFORE, the Condition of this Obligation is such that if
the Principal shall faithfully perform the Contract on his part,
and satisfy all claims and demands, incurred for the same, and
shall fully indemnify and save harmless the Owner from all cost
and damage which he may suffer by reason of failure so to do, and
shall fully reimburse and repay the Owner all outlay and expense
which the Owner may incur in making good any such default, and
shall pay all persons who have contracts directly with the Principal
for labor or materials, then this obligation shall be null and void;
otherwise it shall remain in full force and effect.

PROVIDED, however, that no suit, action or proceeding by reason of any default whatever shall be brought on this Bond after..... months from the day on which the final payment under the Contract falls due.

AND PROVIDED, that any alterations which may be made in the terms of the Contract, or in the work to be done under it, or the giving by the Owner of any extension of time for the performance of the Contract, or any other forbearance on the part of either the Owner or the Principal to the other shall not in any way release the Principal and the Surety or Sureties, or either or any of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to the Surety or Sureties of any such alteration, extension or forbearance being hereby waived.

Signed and Sealed this.....day of.....19....

In Presence of

.....	}	as to (SEAL)
.....		
.....	}	as to (SEAL)
.....		
.....	}	as to (SEAL)
.....		
.....	}	as to (SEAL)
.....		

No. 370.

The standard form of agreement between contractor and subcontractor for use in connection with the third edition of the standard form of agreement and general conditions of the contract.⁴

This form has been approved by the National Association of Builders' Exchanges, the National Association of Master Plumbers, the National Association of

⁴ Adopted by the American Institute of Architects, and reprinted by its permission.

Sheet Metal Contractors of the United States, the National Electrical Contractors' Association of the United States, the National Association of Marble Dealers, and the Heating and Piping Contractors National Association.

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THIS AGREEMENT, made this day of 19
by and between hereinafter called
the Subcontractor and
hereinafter called the Contractor.

WITNESSETH, That the Subcontractor and Contractor for the considerations hereinafter named agree as follows:

Section 1. The Subcontractor agrees to furnish all material and perform all work as described in Section 2 hereof for (Here

name the kind of building.)

for (Here insert the name of the Owner.)

hereinafter called the Owner, at (Here insert the location of the work.)

in accordance with the General Conditions of the Contract between the Owner and the Contractor, and in accordance with the Drawings and the Specifications prepared by

hereinafter called the Architect, all of which General Conditions, Drawings and Specifications signed by the parties thereto or identified by the Architect, form a part of a Contract between the Contractor and the Owner dated 19 and hereby become a part of this Contract.

Section 2. The Subcontractor and the Contractor agree that the materials to be furnished and work to be done by the Subcontractor are (Here insert a precise description of the work, preferably by reference to the numbers of the Drawings and the pages of the Specifications.)

Section 3. The Subcontractor agrees to complete the several portions and the whole of the work herein sublet by the time or times following:

(Here insert the date or dates and if there be liquidated damages state them.)

Section 4. The Contractor agrees to pay the Subcontractor for the performance of his work the sum of

(\$)

in current funds, subject to additions and deductions for changes as may be agreed upon, and to make payments on account thereof in accordance with Section 5 hereof.

Section 5. The Contractor and Subcontractor agree to be bound by the terms of the General Conditions, Drawings and Specifications as far as applicable to this subcontract, and also by the following provisions:

The Subcontractor agrees:

(a) To be bound to the Contractor by the terms of the General Conditions, Drawings and Specifications, and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the Owner.

(b) To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under his contract.

(c) To make all claims for extras, for extensions of time and for damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the Owner, except that the time for making claims for extra cost is one week.

The Contractor agrees:

(d) To be bound to the Subcontractor by all the obligations that the Owner assumes to the Contractor under the General Conditions, Drawings and Specifications, and by all the provisions thereof affording remedies and redress to the Contractor from the Owner.

(e) To pay the Subcontractor, upon the issuance of certificates, if issued under a schedule of values, the amount allowed to the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's interest therein.

(f) To pay the Subcontractor, upon the issuance of certificates, if issued otherwise than as in (e), so that at all times his total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him.

(g) To pay the Subcontractor to such extent as may be provided

by the Contract Documents or the Subcontract, if either of these provides for earlier or larger payments than the above.

(*h*) To pay the Subcontractor on demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time the certificate should issue, even though the Architect fails to issue it for any cause not the fault of the Subcontractor.

(*j*) To pay the Subcontractor a just share of any fire insurance money received by him, the Contractor, under the General Conditions.

(*k*) To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the Subcontract.

(*l*) That no claim for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first ten days of the calendar month following that in which the claim originated.

(*m*) To give the Subcontractor an opportunity to be present and to submit evidence in any arbitration involving his rights.

(*n*) To name as arbitrator under the General Conditions, the person nominated by the Subcontractor if the sole cause of dispute is the work, materials, rights or responsibilities of the Subcontractor; or, if of the Subcontractor and any other Subcontractor jointly, to name as such arbitrator the person upon whom they agree.

The Contractor and the Subcontractor agree that:

(*o*) In the matter of arbitration, their rights and obligations and all procedure shall be analogous to those set forth in the General Conditions.

Nothing herein shall create any obligation on the part of the Owner to pay or to see to the payment of any sums to any Subcontractor.

Section 6.

AGREEMENT BETWEEN

Subcontractor

Contractor

Owner

Architect

Contract Price \$

FINALLY.—The Subcontractor and Contractor, for themselves, their heirs,

successors, executors, administrators and assigns, do hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF they have hereunto set their hands the day and date first above written.

In Presence of

Subcontractor.

Contractor.

No. 371.

The standard form of acceptance of subcontractor's proposal for use in connection with the third edition of the standard form of agreement and general conditions of the contract.^a

This form has been approved by the National Association of Builders' Exchanges, the National Association of Master Plumbers, the National Association of Sheet Metal Contractors of the United States, the National Electrical Contractors' Association of the United States, the National Association of Marble Dealers, and the Heating and Piping Contractors National Association, the Building Trades Employers' Association of the City of New York.

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DEAR SIR: Having entered into a contract with (Here insert the name and address or corporate title of the Owner.)
for the erection of (Here insert the kind of work and the place at which it is to be erected.)
in accordance with plans and specifications prepared by (Here insert the name and address of the Architect.)
and in accordance with the General Conditions of the Contract prefixed to the specifications, the undersigned hereby accepts your proposal of (Here insert date.)

to provide all the materials and do all the work of (Here insert the kind of work to be done, as plumbing, roofing, etc., accurately describing by number, page, etc., the drawings and specifications governing such work.)

The Undersigned agrees to pay you in current funds for the

^a Adopted by the American Institute of Architects, and reprinted by its permission.

faithful performance of the subcontract established by this acceptance of your proposal the sum of

(§)

Our relations in respect of this subcontract are to be governed by the plans and specifications named above, by the General Conditions of the Contract as far as applicable to the work thus sublet and especially by Article 44 of those conditions printed on the reverse hereof.

Very truly yours,
[Reverse Side.]

ARTICLE 44 OF THE GENERAL CONDITIONS OF THE CONTRACT.

Relations of Contractor and Subcontractor.—The Contractor agrees to bind every Subcontractor and every Subcontractor agrees to be bound, by the terms of the General Conditions, Drawings and Specifications, as far as applicable to his work, including the following provisions of this Article, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Owner or Architect. This does not apply to minor subcontracts.

The Subcontractor agrees:

(a) To be bound to the Contractor by the terms of the General Conditions, Drawings and Specifications, and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the Owner.

(b) To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Article 26 of the General Conditions.

(c) To make all claims for extras, for extensions of time and for damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the Owner, except that the time for making claims for extra cost as under Article 25 of the General Conditions, is one week.

The Contractor agrees:

(d) To be bound to the Subcontractor by all the obligations that the Owner assumes to the Contractor under the General Conditions, Drawings and Specifications, and by all the provisions thereof affording remedies and redress to the Contractor from the Owner.

(e) To pay the Subcontractor, upon the issuance of certificates, if issued under the schedule of values described in Article 26 of the

General Conditions, the amount allowed to the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's interest therein.

(f) To pay the Subcontractor, upon the issuance of certificates, if issued otherwise than as in (e), so that at all times his total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him.

(g) To pay the Subcontractor to such extent as may be provided by the Contract Documents or the subcontract, if either of these provides for earlier or larger payments than the above.

(h) To pay the Subcontractor on demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time the certificate should issue, even though the Architect fails to issue it for any cause not the fault of the Subcontractor.

(j) To pay the Subcontractor a just share of any fire insurance money received by him, the Contractor, under Article 21 of the General Conditions.

(k) To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the subcontract.

(l) That no claim for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first ten days of the calendar month following that in which the claim originated.

(m) To give the Subcontractor an opportunity to be present and to submit evidence in any arbitration involving his rights.

(n) To name as arbitrator under Article 45 of the General Conditions, the person nominated by the Subcontractor if the sole cause of dispute is the work, materials, rights or responsibilities of the Subcontractor; or, if of the Subcontractor and any other subcontractor jointly, to name as such arbitrator the person upon whom they agree.

The Contractor and the Subcontractor agree that—

(o) In the matter of arbitration, their rights and obligations and all procedure shall be analogous to those set forth in Article 45 of the General Conditions.

Nothing in this Article shall create any obligation on the part of

the Owner to pay to or to see to the payment of any sums to any subcontractor.

The Subcontractor entering into this agreement should be sure that not merely the above Article 14, but the full text of the General Conditions of the Contract as signed by the Owner and Contractor is known to him, since such full text, though not herein repeated, is binding on him.

NOTES ON THE STANDARD DOCUMENTS.

The Construction of the Documents.

An Agreement, Drawings and Specifications are the necessary parts of a building contract. Many conditions of a general character may be placed at will in the Agreement or in the Specifications. It is, however, wise to assemble them in a single document and, since they have as much bearing on the Drawings as on the Specifications, and even more on the business relations of the contracting parties, they are properly called the "General Conditions of the Contract." As the Agreement, General Conditions, Drawings and Specifications are the constituent elements of the contract and are acknowledged as such in the Agreement, they are correctly termed the Contract Documents. Statements made in any one of them are just as binding as if made in the Agreement.

The Institute's forms, although intended for use in actual practice, should also be regarded as a code of reference representing the judgment of the Institute as to what constitutes good practice and as such they may be drawn upon by architects in improving their own forms. Although the forms are suited for use in connection with a single or general contract, they are equally applicable to an operation conducted under separate contracts.

Notes on the Agreement.

As the laws relative to the following matters vary in the several States, and as the statements made below are true only in a broad way, the provisions of the laws of the state in which the building is to be erected should be ascertained from counsel, and the details of the contract documents should be arranged in conformity therewith.

Date of the Agreement.

Agreements executed on Sunday are generally void by statute.

Payments for materials delivered but not incorporated in the work.

On page 2 the definite system of payment which was printed on the Cover of the second edition, is now printed in the body of the agreement and a blank line is left to permit the easy insertion, when desired, of a clause covering payments for materials delivered but not incorporated in the work.

Names of the Contracting Parties.

Ascertain and use the exact name or legal title of the parties. In the case of an individual or a firm, the address of the place of business should follow the name.

If the best practice is to be observed, the name of each partner as well as that of the firm should be inserted at the place where the names of the contracting parties first appear in the Agreement. Thus, "John Brown, Richard Jones and William Robinson, trading as John Brown & Co." In this way the names of all the individuals who are to be made severally as well as jointly liable for the performance of the contract are indicated.

In the case of a corporation, use the exact title followed by a statement as to the place of incorporation, *e.g.*, "Palmer Construction Co., a corporation under the laws of the State of Delaware." In the case of a voluntary association (unless some state statute authorizes the association as such to enter into contracts in its associate name) insert the names of the officers and some responsible members so that all become personally bound by their signatures.

Signatures of Contracting Parties.

See that the signatures agree exactly with the names of the parties as first written in the Agreement. In the case of a firm, the signature of the firm name by one of the partners, in nearly all cases, binds the firm and each of its members. Obviously, it does not bind special partners except to the extent of their interest. It does not bind the partners in case the contract be for something not within the scope of the firm's business.

On account of the trouble of securing the signatures of the

various partners, it is usual to accept the firm name signed by one of them, and in that case the signature of a partnership should be the firm name, by ———, the name of the general partner signing, but again, if the most rigorous practice is to be followed, the signature will consist of the firm name and of that of each of the partners.

The name of a corporation should be followed by the signature of the officer duly authorized to execute a contract, *e.g.*, "Palmer Construction Co. by Peter Palmer, President." The seal of the corporation must be attached or impressed and attested by the proper officer, *e.g.*, "Attest, Walter Palmer, Secretary."

In the case of a voluntary association the signatures of its officers and of a sufficient number of responsible individual members to insure the carrying out of the financial obligation assumed by the contract should be secured.

Authority to Execute a Contract.

(a) By an individual. There is ordinarily no legal bar to the execution by an individual of a contract for the employment of an architect or for the execution of work upon a building.

(b) By a business corporation. It is important to know—

1. That the corporation has the right to enter into the proposed contract.
2. That it has exercised that right by legal action.
3. That the officer executing the contract has been duly authorized so to act by the corporation.

It is common practice to assume that the Agreement, if signed by the president, sealed with the corporate seal and attested by the secretary, binds the corporation. Unless the signer's authority to sign contracts for the corporation is a matter of common knowledge, however, there should be attached to the Agreement a certificate showing that general power to sign is fully vested in the one signing or else there should be attached a special certificate such as the following:

At a meeting of the Board of Directors of the.....
duly notified and held in.....on.....19.....,
a quorum being present, it was

VOTED: That.....the.....
be and he is hereby authorized and directed in the name and on
behalf of this corporation, and under its corporate seal, to execute

and deliver a contract with.....
 for a.....at.....for the
 sum of \$....., said contract to be in such form
 and subject to such conditions as said.....
 shall see fit. And said.....is hereby
 further authorized and directed in the name and on behalf of this
 corporation and under its corporate seal, to execute and deliver to
 said Owner any bond or bonds he may see fit, to secure the perform-
 ance of said contract by this corporation.

A True Copy.

Attest.....*Secretary.*

(c) By any authority assuming to expend public moneys. The validity of an agreement between such bodies and an architect for his services is so charged with danger that no architect should enter into such an agreement except under advice of competent counsel.

Witnesses.

Witnesses at signing are not necessary. If there are witnesses there may be embarrassment in producing them in case of a contest, whereas, if there are none the signatures may be proved by any competent evidence. Witnesses are of use only when one of the parties claims that what purports to be his signature is a forgery.

Seals.

The attachment of the seal is a necessary part of the legal execution of a contract by a corporation.

The use of a seal or of the word "seal" with the name of an individual or firm can do no harm, but since the only significance of a seal as used in ordinary contracts is to imply a consideration, and since all of the Institute's forms of agreement recite considerations, the use of a seal, except in the case of a corporation, is quite unnecessary. A bond, however, by its very nature must be under seal.

Notes on the General Conditions of the Contract.

In some cases the Articles as printed do not include all necessary General Conditions of the Contract. The Architect will then add such others as he deems wise.

Many architects include in their General Conditions one or more of the subjects named below. Most of these are better placed in the specifications for the various trades; and others, though suited for inclusion in the General Conditions, are not always needed. Among these subjects are:

Bracing building during construction,
Charges for extra copies of drawings,
Chases,
Checking by surveyor and his certificate,
Contractor to keep the work in repair,
Contractor to lay out the work, giving lines and levels,
Contractor to work overtime if required,
Fences,
Heating during construction,
Insurance against lightning, wind storms, hail and earthquake,
Keeping building and cellar free from water,
Ladders,
Lanterns,
Offices and their furniture,
Permission to use articles or methods other than those specified,
Photographs,
Protection and care of trees and shrubs,
Protective coverings in general,
Sanitary convenience,
Scaffolding,
Sheds,
Sidewalks,
Special cleaning other than "broom clean," as in Article 33,
Stoppage of work in freezing weather,
Telephone,
Temporary enclosure from weather,
Temporary stairways,
Temporary wiring and electric lights,
Vault permits,
Watchmen.

For further information of use in connection with the General Conditions, refer to the "Handbook of Architectural Practice," published by the American Institute of Architects.

Notes on the Bond of Suretyship.

The bond of Suretyship is drawn for use with either corporate or individual sureties. If a bond is to be given, this form, without additions or omissions, should be insisted upon to insure a full measure of protection. Proper certification that those signing the bond have authority so to sign should accompany the bond.

Notes on the Invitation to Bid, Instructions to Bidders
and Form of Proposal.

The Institute formerly issued the above named forms which contain much of value. Experience, however, showed that they had generally to be adapted to specific cases. They are, therefore, reproduced here so that Architects may draw from them whatever they deem useful.

Form of Invitation to Submit a Proposal.

DEAR SIR: You are invited to submit a proposal for..... Drawings, Specifications and other information may be procured from this office on and after..... All documents must be returned to this office not later than.....

To be entitled to consideration the proposal must be made upon the form provided by the Architect, which must be fully completed in accordance with the accompanying "Instructions to Bidders" and must be delivered to this office not later than.....

Very truly yours,

.....

Form of Instructions to Bidders.

Proposals, to be entitled to consideration, must be made in accordance with the following instructions:

Proposals shall be made upon the form provided therefor, and all blank spaces in the form shall be fully filled; numbers shall be stated both in writing and in figures; the signature shall be in long hand; and the completed form shall be without interlineation, alteration or erasure.

Proposals shall not contain any recapitulation of the work to be done. No oral, telegraphic or telephonic proposals or modifications will be considered.

Proposals shall be addressed to the Owner, in care of the Archi-

tect, and shall be delivered to the Architect enclosed in an opaque sealed envelope addressed to him, marked "Proposal" and bearing the title of the work and the name of the Bidder.

Should a bidder find discrepancies in, or omissions from, the drawings or documents, or should he be in doubt as to their meaning, he should at once notify the Architect, who will send a written instruction to all bidders. Neither Owner nor Architect will be responsible for any oral instructions.

Before submitting a proposal, bidders should carefully examine the drawings and specifications, visit the site or work, fully inform themselves as to all existing conditions and limitations and shall include in the Proposal a sum to cover the cost of all items included in the Contract.

The competency and responsibility of bidders and of their proposed subcontractors will be considered in making the award. The Owner does not obligate himself to accept the lowest or any other bid.

Provision will be made in the Agreement for payments on account in the following words: (Insert the provision.)

Any Bulletins issued during the time of bidding are to be covered in the proposal and in closing a contract they will become a part thereof.

Form of Proposal.

(The Proposal should be dated and addressed to the Owner in care of the Architect.)

DEAR SIR: Having carefully examined the Instructions to Bidders, the General Conditions of the Contract and Specifications entitled

(Here insert the caption descriptive of the work as used therein.)

and the Drawings, similarly entitled, numbered..... as well as the premises and the conditions affecting the work, the Undersigned proposes to furnish all materials and labor called for by them for.....

(Here insert, in case all the work therein described is to be covered by one contract, "the entire work." In case of a partial contract insert name of the trade or trades to be covered and the numbers of the pages of the Specifications on which the work is described.)

in accordance with the said documents for the sum of..... Dollars (\$.....). If he be notified of the acceptance of this proposal within.....days of the time set for the opening

of bids he agrees to execute a contract for the above work, for the above stated compensation in the form of the Standard Agreement of the American Institute of Architects.

Very truly yours,

.....

SUGGESTIONS TO ARCHITECTS USING THE ABOVE FORM OF PROPOSAL

The above form includes only such statements as will probably be required in any Proposal. Additions will usually have to be made to it. Suggestions suited to certain conditions are offered in the following notes.

If the bidder is to name the time required for completing the work, insert such a clause as the following:

The undersigned agrees, if awarded the Contract, to complete it within..... days, Sundays and whole holidays not included.

If liquidated damages are to be required, insert the following:

And further agrees that, from the compensation otherwise to be paid, the Owner may retain the sum of.....dollars (\$.....) for each day thereafter, Sundays and holidays included, that the work remains uncompleted, which sum is agreed upon as the proper measure of liquidated damages which the Owner will sustain per diem by the failure of the undersigned to complete the work at the time stipulated, and this sum is not to be construed as in any sense a penalty.

If a bond is required, insert the following:

The undersigned agrees, if awarded the Contract, to execute and deliver to the Architect within.....days after the signing of the Contract, a satisfactory bond in the form issued by the American Institute of Architects (second edition reissued 1918) and in an amount equal to the contract sum, and further agrees that if such bond be not required, he will deduct from the proposal price the sum of.....dollars (\$.....).

If a certified check is required, the following clause should be inserted:

The undersigned further agrees that the certified check payable to.....Owner, accompanying this proposal, is left in escrow with the Architect; that its amount is the measure of liquidated damages which the Owner will sustain by the failure of the Undersigned to execute and deliver the above named Agreement

and bond, and that if the Undersigned defaults in executing that Agreement within.....days of written notification of the award of the contract to him or in furnishing the Bond withindays thereafter, then the check shall become the property of the Owner, but if this proposal is not accepted withindays of the time set for the submission of bids, or if the Undersigned executes and delivers said Contract and Bond, the check shall be returned to him on receipt therefor.

If alternative proposals are required, they should be set forth, as for example,

Should.....be substituted for.....
the Undersigned agrees to deduct (or will require the addition of)
.....dollars (\$.....) from (or to) the proposed sum.

If unit prices are required as a part of the proposal, they should be set forth as, for example:

The Undersigned agrees that work added shall be computed at the following prices, and that work omitted shall be computed atper cent less than these prices.

Concrete foundations.....per cubic yard,
Rough brickwork.....per thousand,
Plasteringper yard.

If the names of subcontractors whom the Contractor proposes to employ are required as a part of the Proposal this requirement should be set forth, as, for example:

In case of obtaining the award the Undersigned will employ, subject to the Architect's approval, subcontractors in each of the several trades selected from the following list (one or more names must be inserted for each trade):

Excavation
Stone Masonry
Brickwork
etc., etc.

(B).—Agreement between Principal and Contractor.**No. 372.****Agreement between owner and contractor providing for wrecking and removing building.⁶**

AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Contractor"), and Richard Roe Corporation, a corporation, duly organized under the laws of the State of New York, and having its principal place of business at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Owner"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The Owner hereby sells to the Contractor, and the Contractor hereby agrees to buy from the Owner, the building on the premises, known as No. 57½ Broadway, Borough of Manhattan, New York City.

2. The Contractor shall tear down, remove and cart away all the materials comprising the said building, down to the level of the cellar floor thereof, including all foundation and other walls, but excluding the retaining walls in the yards and the area walls along Whiteacre Avenue; and the Contractor shall remove and cart away all débris of whatsoever character, which may result from the demolition of the said building, and shall leave the premises broom clean to the level of the lowest cellar floor.

3. Time shall be of the essence of this agreement, and the Contractor shall proceed, with the utmost diligence and dispatch, in the demolition and removal of the aforesaid building, materials and débris, and shall complete all work hereunder, on, or before, March 25, 1923.

4. The Contractor, at his own expense, shall furnish and erect whatever sidewalks, bridges and covers, or other works and structures, may be necessary for the proper execution of his work hereunder, and, at his own expense, shall comply with all laws, ordinances, rules and regulations of the state and municipal authorities and departments, relating to, or affecting, the work hereunder, or any part thereof, and shall, at his own expense, secure and obtain

⁶Adapted from *Melton v. Fullerton Weaver Realty Co.* (1915), 214 N. Y. 571, 108, N. E. 849.

any and all permits, licenses and consents that may be necessary in connection therewith.

5. (a) The Contractor shall assume and bear all risk of damage to, or failure of, the work, and all risk of any accident, or accidents, from whatsoever cause arising, until the work herein provided for shall have been fully completed and accepted by the Owner.

(b) The Contractor shall save and hold harmless the Owner from and against all suits, or claims, which may be based upon any alleged injury to any person, or property, which may occur, or which may be alleged to have occurred, in the course of the performance of this agreement by the Contractor, whether such claim shall be made by an employee of the Contractor, or by a third person, and whether or not it shall be claimed that the alleged injury was caused through a negligent act, or omission, of the Contractor; and the Contractor shall, at his own expense, defend any and all such actions, and shall, at his own expense, pay all charges of attorneys, and all costs and other expenses, arising therefrom, or incurred in connection therewith; and, if any judgment shall be rendered against the Owner in any such action, or actions, the Contractor shall, at his own expense, satisfy and discharge the same.

(c) The Contractor shall, contemporaneously with the execution of this agreement, furnish to the Owner a satisfactory surety company indemnity bond in the sum of ten thousand (\$10,000) dollars, for any accident to any individual or property.

6. (a) The Contractor shall provide all labor and materials, which may be required for the performance of this agreement, and shall pay the Owner the sum of nine hundred (\$900) dollars for the said building.

(b) If the Contractor, at any time, shall refuse, or neglect, to supply a sufficiency of properly skilled workmen, or materials, or shall fail in any respect to prosecute the work hereunder, with the utmost diligence and dispatch, or shall otherwise fail to perform any of the terms and agreements herein contained, then, and in any such event, the Owner may, at its election, forthwith terminate this agreement, by giving notice in writing thereof to the Contractor, and may enter upon the premises, and may, for the purpose of completing the work herein provided for, take possession of all materials, tools and appliances thereon, or therein, which may belong to the Contractor, and may, at the expense of the Con-

tractor, employ any other person, or persons, to finish the work and to provide the materials therefor.

7. (a) If the Contractor shall complete all of the work herein provided for, on, or before March 1, 1923, the Owner shall pay to the Contractor the sum of five hundred (\$500) dollars as a bonus.

(b) If the Contractor shall fail to complete all of the work herein provided for, on or before March 25, 1923, the Contractor shall pay the Owner forthwith the sum of five hundred (\$500) dollars as liquidated damages.

8. The Contractor shall, contemporaneously with the execution of this agreement, furnish to the Owner an additional bond, made and executed by the Contractor, as principal, and by a surety company as surety, which bond and surety shall, in every respect, be satisfactory to the Owner, and shall be in the sum of three thousand (\$3,000) dollars, conditioned that the Contractor will perform all the terms, conditions and covenants of this agreement, and will immediately pay to the Owner all expenses incurred by, or judgments entered against the Owner, by reason of any injury to any persons, or property, caused as set forth in article "5" of this agreement.

9. This agreement shall bind the parties hereto, and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the Contractor has hereunto set his hand and seal, and the Owner has signed this agreement, by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, the day and year first above written.

John Doe (L.S.).

Richard Roe Corporation,
By Richard Roe,
President.

(Seal)

Attest:

John Jones,
Secretary.

SECTION 2.—MISCELLANY.

No. 373.

Release by contractor of liens.⁷

KNOW ALL MEN, that—

WHEREAS, John Doe, who resides at No. 11½ Broadway, Borough of Manhattan, New York City, as owner, heretofore entered into a written lease with Doe & Company, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City, as tenant, relating to the premises commonly known as No. 11½ Broadway, Borough of Manhattan, New York City, which said lease was recorded in the office of the register of the County of New York, on December 22, 1922, in Liber 101A, of Conveyances, page 314, to the terms of which lease reference is hereby made for the full provisions thereof; and

WHEREAS, the said lease, among other things, contained a provision for the erection of a building, or buildings, by the said tenant, upon the aforesaid demised premises; and

WHEREAS, the said lease, among other things, provided that the said tenant shall execute and deliver to the said John Doe, upon demand, a bond as therein more particularly set forth; and

WHEREAS, the said Doe & Company intends to erect a building, or buildings, upon the said demised premises, and has requested the said John Doe to waive, or modify, the aforesaid provisions in the said lease, in respect of the requirement of a bond as therein more particularly set forth, and the said John Doe is willing to do so, but only upon certain terms and conditions, and upon, among others, the stipulations and provisions hereinafter contained; and

WHEREAS, Koe & Company, Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 57½ Broadway, Borough of Manhattan, New York City (herein called the "Contractor"), has executed, or is about to execute, a contract with the said Doe & Company, for the construction and erection of such proposed new building, or buildings; and

WHEREAS, the said Koe & Company, Inc., has joined with the

⁷ Adapted from *Cummings v. Broadway-94th Street Realty Co. Inc.* (1921), 196 App. Div. 194, 187 N. Y. Supp. 576.

said Doe & Company in the request of the said Doe & Company to obtain a waiver, or modification, of the aforesaid provisions in said lease, as hereinbefore set forth:

Now, THEREFORE, in consideration of the premises and of the sum of one (\$1) dollar, to it in hand paid, the receipt whereof is hereby acknowledged, the said Contractor hereby covenants and agrees not to file any liens, or make any claims, against the said John Doe personally, or against the aforesaid demised premises, or any part thereof, or against any building, or buildings, or other improvements, erected, or made, or to be erected, or made, thereon, or against the leasehold aforesaid, for any work that the said Contractor may, at any time, do under the contract with Doe & Company hereinabove referred to, or under any other contract, or for any materials that the Contractor may furnish thereunder, or for anything whatsoever done, or to be done, under and pursuant to such contract, or any other contract, or any modification thereof, or upon any other ground of any kind, nature, or character, whatsoever; and the Contractor further covenants to release, and hereby does release, the demised premises above referred to, and each and every part thereof, and any and all buildings or other improvements, that may now, or hereafter, be erected thereon, from any and every lien, charge, or claim of any nature, kind, or character whatsoever, that the Contractor might otherwise, at any time, have against the same, or any part thereof, for work done, or to be done, or materials furnished, or to be furnished, or upon any other ground whatsoever, growing out of, or in any way connected with, or relating to, the erection, or construction, of any building, or buildings, or improvements, upon the aforesaid demised premises, or any part thereof.

IN WITNESS WHEREOF, the Contractor has caused this instrument to be signed by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, this 5th day of January, 1923.

Koe & Company, Inc.,

By Henry Koe,

President.

(Seal)

Attest:

John Jones,

Secretary.

No. 374.

Clause indemnifying owner against injury to persons or property.⁸

The Contractor shall indemnify and save harmless the Owner against all loss, cost, or damage, on account of any injury to persons, or property, occurring in the performance of the contract.

No. 375.

Clause providing that acceptance of last payment shall operate as release.⁹

The acceptance by the Contractor of the last payment, as aforesaid, shall operate as, and shall be, a release to the Owner from all claim and liability to the Contractor, for anything done, or furnished for, or relating to, the work, or for any act, or neglect, of the Owner, relating to, or affecting, the work.

No. 376.

Clause providing that, upon contractor's breach, owner may complete building, and use contractor's materials and other property for the purpose, and providing for forfeiture of contractor's compensation.¹⁰

If the work to be done under this contract shall be abandoned by the Contractor, or if this contract shall be assigned, or if the work shall be sublet by the Contractor, otherwise than as herein specified, or if the Contractor shall, at any time, refuse, or neglect, to supply a sufficiency of workmen of the proper skill and materials of the proper quality, or shall fail, in any respect, to prosecute the work required by this contract, with promptness and diligence, or shall omit to fulfill any provision herein contained, or if, at any time, the Superintendent of the Owner shall be of the opinion, and shall so notify in writing the Owner, that the performance of the contract

⁸ Adapted from *British & American Tobacco Co. v. U. S. Fidelity & Guaranty Co.* (1917), 177 App. Div. 582, 164 N. Y. Supp. 406.

⁹ Adapted from *MacArthur Bros. Co. v. City of New York* (1918), 224 N. Y. 629, 121 N. E. 87.

¹⁰ Adapted from *Wilds v. Board of Education* (1919), 227 N. Y. 211, 125 N. E. 89.

is unnecessarily, or unreasonably, delayed, or that the Contractor is wilfully violating any of the conditions, or covenants, of this contract, or the specifications, or is executing the same in bad faith, or not in accordance with the terms thereof, or, if the work shall not be fully completed, within the time named in this contract for its completion, the Owner shall notify the Contractor to discontinue all work, or any part thereof, under this contract, by a written notice, signed by the Owner, to be served upon the Contractor, either personally, or by leaving said notice, at his place of residence, or business, or with his agent in charge of the work, or by notice, letter, or other communication, addressed to the Contractor, enclosed in a post-paid wrapper, and deposited in any post-office box regularly maintained by the post office; and, thereupon, the Contractor shall discontinue the work, or such part thereof, and the Owner shall, thereupon, have power to contract for the completion of the contract, or to place such and so many persons, as the Owner may deem advisable, by contract or otherwise, to work and complete the work herein described, or such part thereof; and to use such materials as the Owner may find upon the line of the work, and to procure other materials for the completion, so far as may be necessary to fully execute the same in every respect; and the cost and expense thereof, at the reasonable market rates, shall be a charge against the Contractor, who shall pay to the Owner the excess thereof, if any, over and above the unpaid balance of the amount to be paid under this contract; and the Contractor shall have no claim, or demand, to such unpaid balance, or by reason of the nonpayment thereof to him, and shall forfeit all claims to any moneys retained; and no molds, models, centers, scaffolding, planks, horses, derricks, tackle, implements, power plants, or building materials of any kind, belonging to, or used by, the Contractor shall be removed so long as the same may be wanted for the work.

In case the Contractor shall, at any time, in the opinion of the Superintendent of the Owner, neglect faithfully to carry on and perform any portion of the work required by this contract, whereby safety and proper construction may be endangered, or which may not be subsequently rectified, or whereby damage and injury may result to life and property, or either of them, then, and in every such case, the Superintendent shall have the right forthwith, and without notice to the Contractor, to enter upon the work, and to make good any and all work and material and deficiencies arising

by reason of such neglect; and the expense and cost thereof shall be a charge against the Contractor, to be deducted from any payment, or moneys, which may be due, or subsequently become due, under this contract, and the opinion and decision of the Superintendent of the Owner in all instances, which may arise in the manner aforesaid, shall be final, conclusive and binding upon the Contractor. But no action so taken by the Superintendent of the Owner shall release the Contractor from any and all consequences and damages, which may have arisen, or may arise, owing to such neglect, whether wilful, or by omission; and the Contractor covenants and agrees to hold the Owner harmless against, and from, any and all suits at law, and all and every damages and loss whatsoever arising therefrom.

Should the Contractor fail to complete the contract, he shall forfeit all claims for compensation.

No. 377.

Clause requiring approval of extra work.¹¹

No work shall be considered as an extra, unless, before said work shall have been done, a separate written estimate therefor shall have been submitted by the Second Party to the Architect and the same shall have been approved by the First Party.

No. 378.

Clause requiring contractor to furnish bond after execution of contract.¹²

The Contractor shall, together with a good and solvent company licensed to do business in the State of Virginia, as surety, make and deliver to the Owner a bond in the sum of twenty-five thousand dollars, which shall be payable to, and collectible by, the Owner, upon the failure of the Contractor faithfully and fully to comply with each and all of the conditions of the specifications; and the Contractor shall furnish such bond, within ten days after the execution of the contract.

¹¹ Adapted from *M. L. Ryder Bldg. Co. v. City of Albany* (1919), 87 App. Div. 868, 176 N. Y. Supp. 475.

¹² Adapted from *British & American Tobacco Co. v. U. S. Fidelity & Guaranty Co.* (1917), 177 App. Div. 582, 164 N. Y. Supp. 406.

No. 379.**Clause transferring title to work and material to owner.¹³**

All work and all materials delivered on the premises to form part of the work shall be considered the property of the Owner, and shall not be removed without his consent; but the Contractor shall have the right to remove all surplus materials, after the completion of the work.

¹³ Adapted from *British & American Tobacco Co. v. U. S. Fidelity & Guaranty Co.* (1917), 177 App. Div. 582, 164 N. Y. Supp. 406.

CHAPTER XXI

PRINCIPAL AND SURETY.

No. 380—Bond to secure performance of building agreement.

No. 381—Bond to secure performance of agreement to purchase coal.

No. 382—Bond to secure performance of agreements between husband and wife, providing for custody of children and for appearing in divorce action in a foreign state.

No. 383—Bond to secure fidelity of employee.

No. 384—Bond to secure discharge of mechanic's lien, required by statute.

No. 385—Bond of dealer to pay for purchases of milk or cream, required by statute.

No. 386—Bond to secure fidelity of treasurer.

No. 380.

Bond to secure performance of building agreement.¹

KNOW ALL MEN, that John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Principal"), and the Roe Fidelity & Guaranty Co., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Surety"), are held and firmly bound unto The Koe Tobacco Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 57½ Broadway, Borough of Manhattan, New York City (herein called the "Obligee"), in the full and just sum of twenty thousand (\$20,000) dollars, lawful money of the United States, to the payment of which sum, well and truly to be made, the said Principal binds himself, his heirs, executors, and

¹ Adapted from *British & American Tobacco Co. v. U. S. Fidelity & Guaranty Co.* (1917), 177 App. Div. 582, 164 N. Y. Supp. 406.

administrators, and the said Surety binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Signed, sealed and delivered this 5th day of January, 1923.

WHEREAS, the said Principal has entered into a certain written contract with the Obligee, dated December 11, 1922, for the erection and completion of a building, known as the "Manufacturing Plant," all in accordance with the terms and conditions of the said contract and the plans and specifications prepared therefor, said contract being made a part hereof as fully and to the same extent as though set forth at length herein :

NOW, THEREFORE, THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH, that, if the said Principal shall well and truly indemnify and save harmless the said Obligee from any pecuniary loss, resulting from the breach of any of the conditions of said contract on the part of the said Principal to be performed, then this obligation shall be void; otherwise to remain in full force and effect in law; PROVIDED, HOWEVER, that this bond is issued subject to the following conditions and privileges:

1. That no liability shall attach to the Surety hereunder unless, in the event of any default on the part of the Principal in the performance of any of the terms, covenants and conditions of the said contract, the Obligee shall promptly, and in any event not later than thirty (30) days after knowledge of such default, deliver to the Surety, at its office in New York City, written notice thereof, with a statement of the principal facts, showing such default to the date thereof; nor unless the said Obligee shall deliver written notice to the Surety, at its office aforesaid, and the consent of the Surety thereto obtained, before making to the Principal the final payment provided for, under the contract herein referred to.

2. That, in case of such default on the part of the Principal, the Surety shall have the right, if it so desires, to assume and complete, or procure the completion of, said contract; and, in case of such default, the Surety shall be subrogated to all the rights and properties of the Principal arising out of the said contract and otherwise, including all securities and indemnities theretofore received by the Obligee, and all deferred payments, retained percentages and credits, due to the Principal at the time of such default, or to become due thereafter, by the terms and dates of said contract.

3. That, in no event, shall the Surety be liable for a greater sum

than the penalty of this bond, or subject to any suit, action or other proceeding thereon that may be instituted later than the 1st day of March, 1924.

4. That, in no event, shall the Surety be liable for any damage resulting from, or for the construction or repair of, any work damaged, or destroyed, by any act of God, or the public enemy, or mobs, or riots, or civil commotion, or by employees leaving the work being done under the contract, on account of so-called "strikes" or labor difficulties.

5. (a) That the Surety shall not be liable for damages to the person of any one, under, or by authority of, any statutory provision for damages or compensation to any employee or otherwise; and

(b) That the Surety shall not be obligated to furnish any bond, or obligation, other than the one executed.

IN TESTIMONY WHEREOF, the said Principal has hereunto set his hand and seal, and the said Surety has caused these presents to be signed by its President, thereunto duly authorized, and its corporate seal to be hereunto affixed, attested by its Assistant Secretary, the day and year first above written.

John Doe (L.S.).

Roe Fidelity & Guaranty Co.,

By Richard Roe,

President.

(Seal)

Attest:

John Jones,

Assistant Secretary.

No. 381.

Bond to secure performance of agreement to purchase coal.²

KNOW ALL MEN, that the undersigned, Doe Mining Company, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "Principal"), and the Roe Surety Company, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Surety"), are held and firmly bound unto the

² Cf. *Allison v. Wood* (1892), 147 Pa. St. 197, 23 Atl. 559, 30 Am. St. Rep. 726.

Koe Coal Company, a corporation, duly organized under the laws of the State of Ohio, and having its principal office at No. 11½ Main Street, Cincinnati, State of Ohio, in the sum of twenty thousand (\$20,000) dollars, for the payment of which sum the said Principal and Surety bind themselves, their successors and assigns, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal, who is the buyer mentioned and described in the contract hereto annexed, will accept and pay for the coal contracted for under said contract, then this obligation shall be null and void; otherwise to remain in full force and virtue.

Signed and sealed, this 5th day of January, 1923.

Doe Mining Company,
By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Roe Surety Company,
By Richard Roe,
President.

(Seal)

Attest:

Henry Koe,
Secretary.

[Annex Copy of Contract.]

No. 382.

Bond to secure performance of agreements between husband and wife, providing for custody of children and for appearing in divorce action in a foreign state.³

KNOW ALL MEN, that John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Principal"), and the Roe Title & Trust Co., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New

³ Adapted from *LaMoutte v. Title Guaranty & Surety Co.* (1917), 221 N. Y. 690, 117 N. E. 1073.

York City (herein called the "Surety"), are held and firmly bound unto Jane Doe, residing at No. 11½ Main Street, Doeville, State of Idaho (herein called the "Obligee"), in the sum of five thousand (\$5,000) dollars, lawful money of the United States, to be paid to said Obligee, her executors and administrators, for which payment, well and truly to be made, we do hereby, jointly and severally, bind and obligate ourselves, our heirs, executors, administrators and successors, and each of them, firmly by these presents.

Sealed with our seals, and dated this 5th day of January, 1923.

John Doe (L.S.).

Roe Title & Trust Co.,

By Richard Roe,
President.

(Seal)

Attest:

Henry Koe,
Secretary.

WHEREAS, a contract, dated January 3, 1923, has been entered into between the Principal and the Obligee, wherein and whereby it is provided that the custody of Anne Doe and Josephine Doe, the children of the marriage of the said Principal and Obligee, shall be divided equally between the parties to said contract, pursuant to its terms and conditions, which contract is hereinafter referred to as "Contract A"; and

WHEREAS, by another certain contract, dated January 4, 1923, between the same parties, hereinafter referred to as "Contract B," wherein the Principal is described as the "First Party," and the Obligee is described as the "Second Party," and wherein in paragraph 2d thereof, the aforesaid "Contract A" is referred to as an agreement "providing for the custody, maintenance and support of the children Anne and Josephine," the said parties agreed, among other things, as follows:

"7th. That if the said Second Party appears in the action now pending in the District Court of Idaho, by an attorney duly authorized to appear for him therein, and makes the deposit of the papers as required by this agreement, and if the First Party obtains in said suit now pending in Idaho, an absolute decree of divorce from said Second Party, the First Party hereby covenants and agrees to deliver, at New York City, into the care and custody of the Second Party, the two children, Anne and Josephine, within fifteen

days after the granting of said decree; to be held by said Second Party, pursuant to the terms of the agreement entered into between the parties regarding the custody of the said children"; and

WHEREAS, the Obligee entered into said Contract A and Contract B, upon the Principal's agreement and stipulation therein and thereby, and herein and hereby, evidenced to faithfully carry out and perform all the conditions on the part of the said Principal of said Contract A (with the exceptions hereinafter noted), and of paragraph 7th of said Contract B, and upon the execution and delivery of this undertaking to said Obligee, to pay to said Obligee the sum of five thousand (\$5,000) dollars for liquidated damages to said Obligee, by reason of the nonperformance by said Principal of any of the conditions of said Contract A (with the exceptions hereinafter noted) or of paragraph 7th of said Contract B (hereinafter noted in full), on the part of said Principal to be performed:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the said Principal shall duly and faithfully carry out and perform any and all the conditions of Contract A and of the aforesaid paragraph 7th of Contract B, then this undertaking shall be void; otherwise to remain in full force and effect.

This undertaking is issued upon the express conditions that, upon due proof to said Surety that said Principal has not performed any of the conditions on his part of said Contract A (except those hereinafter noted), or of the aforesaid paragraph 7th of Contract B, and has, upon demand, by registered mail to his address last known to the Obligee, failed to pay to the Obligee the amount of this undertaking, then the Surety agrees to pay the full amount of this undertaking to said Obligee as liquidated damages, which sum is hereby stipulated as liquidated damages, and not as a penalty, by the said Principal and said Surety to the said Obligee.

And upon the further condition, that, if any liability shall accrue on the part of the said Surety by reason of this undertaking, after settlement of the same, the said Surety shall be subrogated to all rights and remedies, which the said Obligee would have against the Principal in this undertaking, or any other person.

This obligation shall continue in force and effect, until September 13, 1923.

PROVIDED, HOWEVER, that if said Obligee shall fail to perform any of the conditions of said Contract A, or of said paragraph 7th,

of said Contract B, on her part to be performed, this undertaking shall be void.

The exceptions in said Contract A hereinbefore referred to are:

(1) "The expenses of educating said children shall be borne by the First Party."

(2) "The salaries of the governess shall be borne by the First Party"; and

(3) "The board and lodging of the governess shall be furnished by the party in whose care the children are during the various periods mentioned in this agreement."

And this undertaking shall not be operative with respect to the nonperformance by said Principal of any conditions of any of the aforesaid exceptions.

No waiver by said Principal, or Obligee, of any of his, or her, rights under any provisions of said Contract A, or of paragraph 7th of said Contract B, or of this undertaking, shall operate, directly or indirectly, thereafter to impair any of the rights of said parties under this undertaking, the intention hereof being that such undertaking shall, after such waiver, continue with the same force and effect as if such waiver had not been made.

John Doe (L.S.).

Roe Title & Trust Co.,

By John Brown,
Vice-President.

(Seal)

Attest:

John Jones,
Secretary.

[Annex Copies of Contracts.]

No. 383.

Bond to secure fidelity of employee.⁴

KNOW ALL MEN, that we, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, as Principal, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, as Surety, are held and firmly bound unto the Koe Woolen Company, a corporation, duly organized under the

⁴ Adapted from *Nye Schneider Fowler Co. v. Barnes* (1917), 179 App. Div. 239, 166 N. Y. Supp. 461.

laws of the State of New York, and having its principal office at No. 231½ Broadway, Borough of Manhattan, New York City, in the penal sum of three thousand (\$3,000) dollars, lawful money of the United States, for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs, executors and administrators, firmly by these presents.

Signed and sealed with our seals, this 5th day of January, 1923.

WHEREAS, the said Koe Woolen Company is engaged in various kinds of business at divers places in the states of Nebraska, Iowa, Minnesota, and elsewhere, and is in need of employees in various departments of work, which employees, or any of them, may be assigned to such different work in such localities as the said Koe Woolen Company may elect, from time to time; and

WHEREAS, the said Principal has made application for employment upon a salary by said Koe Woolen Company:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that, in consideration of the employment of the said Principal by the said Koe Woolen Company as one of its employees, if the said Principal shall account to the said Koe Woolen Company for all moneys, bills payable, and property, of any name and nature belonging to said Koe Woolen Company, and, also, well and truly transact the business of said Koe Woolen Company, coming into his hands as such employee, and, also, keep a correct, complete and perfect account thereof, and shall, in all ways, do all that is required of him on behalf of said Koe Woolen Company, as such employee, then this obligation to be null and void; otherwise it shall be, and remain in full force and effect.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

No. 384.

Bond to secure discharge of mechanic's lien, required by statute.⁵

KNOW ALL MEN, that we, John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "Principal"), and the Roe Accident & Liability Co., a corporation,

⁵ Adapted from *Sklar & Cohen Woodworking Co. v. Owen* (1917), 177 App. Div. 796, 165 N. Y. Supp. 13.

duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Surety"), are held and firmly bound unto the clerk of the county of Kings in the sum of one thousand (\$1,000) dollars, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Sealed with our seals, and dated this 5th day of January, 1923.

WHEREAS, on November 5, 1922, Smith-Brown, Inc., caused to be filed in the office of the clerk of the county of Kings a notice, claiming a lien of five hundred (\$500) dollars against the property described in the annexed affidavit and order; and

WHEREAS, the said Principal desires to discharge said lien, pursuant to the Lien Laws of the State of New York, by giving an undertaking, as provided in said lien laws, to wit, Section 19, Chapter 33, of the Consolidated Laws (Chapter 38, Laws of New York, 1909); and

WHEREAS, by an order of the County Court of Kings County, duly entered in the office of the clerk of the county of Kings on the 5th day of January, 1923, the amount of the undertaking to be executed for the purpose of discharging such lien was fixed at the sum of one thousand (\$1,000) dollars:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the above-bounden Principal shall well and truly pay any judgment, which may be rendered against the said property for the enforcement of the aforesaid lien not exceeding the sum of one thousand (\$1,000) dollars, then this obligation shall be void; otherwise it shall be and remain in full force and virtue.

John Doe (L.S.).

Roe Accident & Liability Co.,

By Richard Roe,

President.

(Seal)

Attest:

John Jones,
Secretary.

[Annex Affidavit and Order.]

No. 385.

Bond of dealer to pay for purchases of milk or cream, required by statute.⁶

KNOW ALL MEN, that we, John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Principal"), and Roe Indemnity Co., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Surety"), are held and firmly bound unto the Commissioner of Agriculture of the State of New York in the penal sum of five thousand (\$5,000) dollars, lawful money of the United States, well and truly to be paid to the said Commissioner of Agriculture of the State of New York, or his successors, legal representatives, attorney or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this 5th day of January, 1923.

WHEREAS, the above-bounden Principal has applied, or is about to apply, to the Commissioner of Agriculture of the State of New York, for a license to engage in the business of buying milk within the State of New York, pursuant to the provisions of Section 55 of the Agricultural Law of the State of New York, as amended, for the year commencing September 1, 1923, and ending August 31, 1923, at No. 11½ Broadway, Borough of Manhattan, New York City, and at divers other places, within said State of New York, as may be designated in said application, or in applications supplemental thereto:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Commissioner of Agriculture of the State of New York shall issue to the above-bounden Principal the license applied for, and if the said Principal shall faithfully comply with the provisions of Chapter 9 of the Laws of 1909, of the State of New York, entitled "An Act in relation to agriculture, constituting Chapter 1 of the Consolidated Laws," as amended, and promptly make payment to the proper person, or persons, of all amounts due persons,

⁶ Adapted from *Wilson v. Israel* (1920), 227 N. Y. 423, 125 N. E. 819.

who have sold milk, or cream, to said Principal, during the period that the said license is in force, then this obligation is to be void; otherwise, to remain in full force and virtue.

John Doe (L.S.).
Roe Indemnity Co.,
By Richard Roe,
President.

(Seal)

Attest:

John Jones,
Secretary.

No. 386.

Bond to secure fidelity of treasurer.⁷

KNOW ALL MEN, that we, John Doe and Thomas Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City, are held and firmly bound unto the Roe National Bank, a corporation, duly organized under the laws of the United States, and having its principal office at No. 113½ Broadway, Borough of Manhattan, New York City, in the sum of fifteen thousand (\$15,000) dollars, lawful money of the United States, to be paid to the said Roe National Bank, its successors or assigns, for which payment, well and truly to be made, we do hereby, jointly and severally, bind and obligate ourselves, our heirs, executors, administrators and assigns.

Sealed with our seals, and dated this 5th day of January, 1923.

WHEREAS, the above-named John Doe has been chosen and appointed assistant treasurer of the Roe National Bank, and will, by virtue of his office, handle divers sums of money and securities belonging to the said Bank:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above-bounden John Doe, his executors or administrators, shall, at the expiration of his said office, or at any time, on request to him, or them, make, or give to the said Roe National Bank, or its agent, or attorney, a just, full and true account of all such moneys or securities or other property, as may have come into his hands, charge or possession, as such assistant treasurer as afore-said, and shall and do pay and deliver over to his successor in office,

⁷ Adapted from *Ulster County Savings Inst. v. Young* (1899), 161 N. Y. 23, 55 N. E. 483.

or any other person duly authorized to receive the same, all such sums of money, security or other property as may appear to be due and owing by him to the said Roe National Bank, and if the said John Doe shall well and truly, honestly and faithfully, in all things, serve the said Roe National Bank in the capacity of assistant treasurer, as aforesaid, during his continuance in office, then the above obligation shall be null and void; otherwise to remain in full force and effect; it being understood that this bond is to be binding for all the time that the said John Doe shall hold said office of assistant treasurer, even though he holds under successive appointments, but nothing herein shall prevent the surety terminating his liability, by giving at least two weeks' written notice of his intention so to do.

John Doe (L.S.).

Thomas Doe (L.S.).

In the presence of
John Jones.

CHAPTER XXII

SETTLOR AND TRUSTEE

- No. 387—Deed of trust, conveying personal property to trustees in trust, to pay income to settlor, during life, and, thirty days after death, to pay principal to his widow, if living, or to her appointee by will, and, in default of appointment, to settlor's executors, unless widow predeceases him, in which event trust fund is to be returned to settlor.
- No. 388—Deed of trust, conveying personal property to trustees, to invest and apply income to use of settlor's daughter, and, at her death, to pay principal and accumulated income to person appointed by her, and, in default thereof, to her issue, and, in default of issue, to pay the same to other children of settlor or their issue.
- No. 389—Deed of trust, conveying real property to trustee to apply the income therefrom to the payment of settlor's debts and to pay fixed sum to settlor, with direction to convey the unsold property or the proceeds of any sale, to settlor's next of kin, upon settlor's death.
- No. 390—Deed of trust, conveying real and personal property to trustee, to pay income to settlor and settlor's children, and, upon settlor's death, to divide the property among the settlor's children and grandchildren.
- No. 391—Deed of trust by husband and wife, conveying real and personal property to trustee, to divide income equally between them, during their joint lives, and, upon death of either, to divide corpus into two equal parts, and transfer one to their then living child, or children, and to hold other part and pay income therefrom to survivor for life, and, upon survivor's death, to transfer such part to their then living child and children of any deceased child, and, upon death of both settlors, leaving no children, or grandchildren, to convey the part to husband's then surviving next of kin.

No. 392—Trust indenture, providing for issue of one million dollars of ten year six per cent sinking fund gold bonds.

No. 393—Voting trust agreement.

No. 387.

Deed of trust, conveying personal property to trustees in trust to pay income to settlor, during life, and, thirty days after death, to pay principal to his widow, if living, or to her appointee by will, and, in default of appointment, to settlor's executors, unless widow predeceases him, in which event trust fund is to be returned to settlor.¹

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "Settlor"), and Richard Roe and Henry Koe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Trustees"), WITNESSETH:

WHEREAS, the Settlor desires to relieve himself of the care of a portion of his estate, and, for that purpose, desires to establish a trust, upon the conditions, and for the uses and purposes, hereinafter set forth:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

FIRST: The Settlor hereby gives, grants, transfers and sets over unto the said Trustees, and their successors, the sum of one hundred thousand (\$100,000) dollars,

TO HAVE AND TO HOLD the same unto the said Trustees, and their successors,

IN TRUST, NEVERTHELESS, for the following uses and purposes:

1. To invest, reinvest, and, from time to time, change the investment of the said principal sum, and to receive the rents, issues, profits and income therefrom derived, and to pay therefrom the expenses of investment, taxes, assessments, insurance and all other necessary and proper charges and expenses incident to the performance of the trusts hereby created, and to pay over the net balance of said income, in at least semi-annual installments, to the Settlor, so long as he shall live, except as hereinafter otherwise provided.

2. Upon the death of the Settlor, and within thirty (30) days thereafter, if his wife, Mary Doe, shall then be living, to pay over

¹ Adapted from *In re Garcia's Estate* (1918), 183 App. Div. 712, 170 N. Y. Supp. 980.

to the said Mary Doe the principal of the said sum, either in cash, or in such securities as the same may be then invested, together with any income then accrued, and not yet paid to the Settlor; but, if the said Mary Doe should die, before such payment over to her is made, then to pay over the same to such person, or persons, as she shall, by her last will and testament, appoint and direct, or, if she should die intestate, then to pay over the same to the executors of the last will and testament of the Settlor, to be and become a part of the Settlor's residuary estate.

3. But, if the said wife of the Settlor shall die before the Settlor, then, upon her death, or within thirty (30) days thereafter, to pay over the said principal sum, either in cash or in securities (if the same shall then be invested in securities), together with any income then accrued and unpaid, to the Settlor, but, if the Settlor should die before such payment over to him is made, then to pay over the same to the executors of the last will and testament of the Settlor, to be and become a part of the residuary estate of the Settlor.

4. But if, at any time, during the joint lives of the Settlor and his wife, the said Settlor should, for any cause, or reason, whatsoever, be prevented, or forestalled, from receiving the whole of the net income, then, so long as the said Settlor shall be so prevented or forestalled, the said Trustees shall pay said net income to said Mary Doe, in at least semi-annual installments, and, upon the death of the Settlor, shall pay said principal sum to the said Mary Doe, as hereinbefore provided; but, if his said wife, Mary Doe, shall die, while said Settlor is so prevented or forestalled, said Trustees shall thereafter apply said net income to the support and maintenance of the Settlor, and, upon his death, shall pay over said principal sum to the executors of the last will and testament of the said Settlor, to be and become a part of the residuary estate of the Settlor.

5. If either of said Trustees shall resign, or die, before the termination of the trust herein created, the remaining, or surviving, Trustee, shall have, and is hereby given, the power and authority to nominate and appoint a new Trustee as successor to the Trustee so resigning, or dying, by an instrument in writing, duly signed and executed by such remaining, or surviving, Trustee, and annexed hereto; and, thereupon, such new Trustee shall be vested with all the powers and duties granted to and imposed upon the Trustees herein named, including the power of appointing a suc-

cessor trustee. But, if both Trustees for the time being should resign, or die, without appointing any successor, or successors, then the Settlor shall have the power and authority to nominate and appoint a new Trustee, or Trustees hereunder, by an instrument in writing, duly signed and executed by said Settlor, and annexed hereto, or, at his election, by an instrument, in writing, duly signed and executed by said Settlor, to declare the trusts hereunder terminated and brought to an end, and to demand and receive payment of the said principal sum and any accrued interest thereon remaining unpaid from the then holders thereof.

6. The said Trustees hereby accept the trust herein created, and covenant and agree to and with the Settlor, in consideration thereof, that they will execute the same as herein provided, with all due fidelity, and will account for all moneys received by them hereunder, to the beneficiary hereunder, when thereunto properly and lawfully required; it being agreed that either of said Trustees, or their successor, or successors, may resign such trusteeship, and, upon properly accounting for all moneys received by him, or them, be thereupon discharged from any and all further liability hereunder; it being, also, agreed that said Trustees, and each of them, shall not be held accountable, or liable, for any error in judgment in the execution of said trust, nor shall either of them be held liable, or accountable, for the acts, or default, of the other.

7. It is further agreed that the Trustees, in investing the said principal sum, shall not be confined to the usual and customary so-called "legal investments" for trustees, such as securities of the United States, of the State of New York, and of the City of New York, railroad bonds, and bonds secured by mortgages covering improved real estate in the City of New York of not more than two-thirds value thereof, in which, by law, savings banks of the State of New York are allowed to invest their funds, but the said Trustees are at liberty to make other and different investments, which, in their judgment, may seem proper, and the said Trustees shall not be liable or accountable for any depreciation in the value thereof, but the losses, if any there shall be, shall fall solely upon those beneficially interested in said trusts; and, if the said Trustees in making said investments, shall pay more than the par value for any investment, they shall not be obliged to establish a sinking fund, out of the income of such investments, for the repayment to the said principal of the sum so paid over and above par, but

the entire income of said securities shall be paid and disbursed as hereinbefore provided.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

Henry Koe (L.S.).

In the presence of

John Jones.

No. 388.

Deed of trust, conveying personal property to trustees, to invest and apply income to use of settlor's daughter, and, at her death, to pay principal and accumulated income to persons appointed by her, and, in default thereof, to her issue, and, in default of issue, to pay the same to other children of settlor or their issue.²

THIS INDENTURE, made January 5, 1923, by John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe and Henry Koe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Parties"), WITNESSETH:

1. That the First Party, in consideration of the premises, hereby passing, assigns, sets over and transfers to the Second Parties all his right, title and interest in

(a) One hundred (100) shares of preferred stock of Doe Telephone Company, and

(b) Two hundred (200) shares of common stock of Doe Railway Company, and

(c) Fifty (50) shares of preferred stock of Doe Steamship Company,

which the Second Parties are to have and to hold, for and during the term of the natural life of Jane Doe, the daughter of the First Party, upon the special trust and confidence, to have and to hold and invest the same, and to receive the income, rents, issues and profits arising therefrom, and to apply the same to the use, main-

² Adapted from *In re Bowers Estate* (1921), 195 App. Div. 548, 186 N. Y. Supp. 912; *affd.* (1921), 231 N. Y. 613, 132 N. E. 910.

tenance and support of the said Jane Doe, and, upon her death, to pay over the principal and any accumulations of income to such person, or persons, and in such shares and lawful estates, as the said Jane Doe may nominate and appoint, by her last will and testament, or other written instrument, and, in default of the same, to pay and transfer the same to her issue *per stirpes*, and in default of such issue, to pay and transfer the same to George Doe and John Doe, Jr., sons of the First Party, in equal shares, the issue of either then deceased son taking its parent's share by representation; and, if either the said George Doe or John Doe, Jr., shall then be deceased leaving no issue, the survivor shall take the whole; and, if both the said George Doe and John Doe, Jr., shall be then deceased, only one leaving issue, such issue shall take the whole.

2. It is further expressly agreed:

(a) That the Second Parties may invest the trust estate and the proceeds thereof in real estate, bonds secured by mortgage in Greater New York not exceeding two-thirds of the appraised value, or in bonds of railroads secured by mortgages, and in such bonds, stocks or other securities as are allowed by law for savings bank investments, and, further, in any securities whatsoever, which, during the lifetime of the First Party, may be approved by him.

(b) That, upon the request of the said Jane Doe, and of the First Party, if the said First Party shall then be living, the Second Parties, and the survivor of them, and their, and his, successors or successor, may invest the whole, or any part, of the trust estate in a dwelling house, to be used as a residence for the said Jane Doe.

(c) That it shall be lawful for the said Second Parties, and the survivor of them, their, and his, successors or successor, and they are hereby expressly granted full power and authority, to grant, bargain, sell and assign, transfer and convey, all, or any, of the estate hereinbefore transferred to them in trust, or any part, or parts, thereof, or any re-investment, or substitution thereof, and to execute good and valid releases and conveyances thereof in fee simple, or of any less, or other, estate therein, to the purchaser, or purchasers, thereof, grantee, or grantees, thereof, and to re-invest the proceeds thereof as the same shall be received.

(d) That it shall, and may, be lawful for the said Second Parties, and the survivor of them, their, and his, successors, or successor, to lease, for terms not exceeding twenty-one (21) years, any

real estate that may be held by them, and to execute good and valid leases thereof.

(e) That the First Party may, at any time, and, from time to time, with the approval of the Second Parties, and the survivor of them, their, and his, successors, or successor, alter, amend, or extend, all, or any, of the terms and conditions of this instrument, and may, with like consent, confer new powers upon the Second Parties, concerning the administration of their trust.

(f) That, in the event of either one of the Second Parties dying, resigning the aforesaid trusts, or becoming incapable of acting in the same, the said Jane Doe may, by instrument in writing, nominate and appoint a new trustee to take the place of the trustee, so dying or retiring, or becoming incapable of acting, and, in the event of her neglect to do so for a period of three (3) months, then the survivor of the Second Parties, upon thirty (30) days' notice to the said Jane Doe, may nominate, constitute and appoint, in writing, a new trustee in place of the deceased, or retiring, or incapacitated, trustee; and, when, and as often as, any new trustee, or trustees, shall be nominated and appointed as aforesaid, any such new trustee, or trustees, shall act, without giving security, and all of the trust estate then remaining shall vest in such new trustee, or trustees, either alone, or, as the case may be, jointly with the remaining trustee, or trustees, upon the same trusts, and upon the same intents and purposes, and with, and subject to, the same powers and provisos, as are hereinbefore declared and expressed of and concerning the same respectively, to the end and purpose that all and every such trustee and trustees shall be vested with the said estate, and shall, and may, execute the aforesaid trusts and powers as fully and particularly as if he, or they, had been named as such trustee, or trustees, in this instrument.

3. That the said Second Parties, by joining in the execution hereof, acknowledge the receipt of the said trust fund, and signify their acceptance of the trust hereby created.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

Henry Koe (L.S.).

In the presence of

John Jones.

No. 389.

Deed of trust, conveying real property to trustee to apply the income therefrom to the payment of settlor's debts and to pay fixed sum to settlor, with direction to convey the unsold property or the proceeds of any sale, to settlor's next of kin, upon settlor's death.³

THIS AGREEMENT, made January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

That, in consideration of the sum of ten thousand (\$10,000) dollars to him in hand paid by the Second Party, the receipt whereof is hereby acknowledged, and in further consideration of the trust herein contained, the First Party hereby grants, alienates, remises, releases, conveys and confirms unto the said Second Party, his heirs, and assigns forever, all that certain piece, or parcel, of land, situate, lying and being in Ward 17-A of the City of New York, which is bounded and described, as follows:

BEGINNING * * *

TO HAVE AND TO HOLD all and singular the above granted premises, and every part thereof, unto the said Second Party, his successors and assigns, forever, in fee:

IN TRUST, NEVERTHELESS, and to and for the uses, interest and purposes herein described and declared, that is to say, to receive the rents, issues and profits of the said premises, and, after paying the costs, taxes, assessments, repairs, improvements and commissions, at the rate of five (5%) per cent per annum,

FIRST. To pay the debts now owing by the First Party, which are set forth in the list hereto annexed and hereby made a part hereof.

SECOND. To pay two certain mortgages, with the interest thereon, which are now liens on said premises, *viz.*, one made by the said First Party to Henry Koe, for the sum of one thousand (\$1,000) dollars, dated February 1, 1919, and recorded in the office of the register of the county of New York on February 13,

³ Adapted from *Doctor v. Hughes* (1911), 225 N. Y. 305, 122 N. E. 221.

1919, in Liber 48A, page 128 of Mortgages, and one mortgage made by the said First Party to John Jones, for three thousand (\$3,000) dollars, bearing date January 5, 1919, and recorded in the office of the register of the county of New York on January 13, 1919, in Liber 46A, page 120 of Mortgages.

THIRD. To pay to the First Party, during his natural life, the sum of fifteen hundred (\$1,500) dollars yearly, in twelve equal monthly installments of one hundred and twenty-five (\$125) dollars each; or, in lieu thereof, to pay the support and maintenance of the said First Party, not, however, in excess of such yearly sum of fifteen hundred (\$1,500) dollars, unless the Second Party, in his discretion, shall deem it to the best advantage of the First Party to exceed such sum of fifteen hundred (\$1,500) dollars.

FOURTH. This conveyance is upon the further trust, that the said Second Party is authorized and empowered to mortgage the said premises for such an amount, and for such time, and upon such terms, as he shall deem best, for the purpose of paying off the said mortgages now upon said premises, and to carry into effect the other provisions herein contained. And the said Second Party is hereby authorized and empowered to sell and convey said premises, at such time, and for such an amount as he shall deem best and to make good and sufficient conveyance to the purchaser thereof. But the avails arising on such a sale shall be used and applied to and for the purposes of the trust herein created.

FIFTH. Upon the decease of the First Party, the Second Party shall convey the said premises (if not sold) to the next of kin of the First Party; but, if the said premises shall have been sold, as herein provided, then the balance of the avails of the sale, then remaining unexpended, shall be paid to the next of kin of the First Party.

SIXTH. It is, however, understood that this conveyance is on the express understanding that if, at any time, the Second Party desires to relinquish the trust hereby created, and be released therefrom, he may re-convey said premises to the First Party, or he may appoint another trustee, or trustees, in his place, and, thereupon, such new trustee, or trustees, on acceptance of the said trust, in writing, shall succeed to, and be bound by, all the provisions herein contained, and the Second Party shall be released and discharged of, and from, all duties and obligations herein contained.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

[Annex Schedule of Debts.]

No. 390.

Deed of trust, conveying real and personal property to trustee, to pay income to settlor and settlor's children, and, upon settlor's death, to divide the property among the settlor's children and grandchildren.⁴

THIS INDENTURE, made January 5, 1923, by Jane Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and the Roe Trust Company, a corporation, duly organized under the laws of the State of New York, and having its principal place of business at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"), WITNESSETH:

1. That the First Party, in consideration of the sum of one (\$1) dollar, and of her love and affection for her children, and of her desire to provide and secure for them, beyond peradventure, proper maintenance, education and support, and in further consideration of other valuable consideration, to her in hand paid, the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer, set over, grant and convey unto the Second Party all of her property, both real and personal, and wheresoever situated (a list whereof is hereto annexed and hereby made a part hereof), subject to her existing outstanding obligations to the Koe Insurance Co., amounting to the sum of five thousand (\$5,000) dollars,

IN TRUST, NEVERTHELESS, FOR THE FOLLOWING USES AND PURPOSES:

FIRST: That the Second Party shall keep the said trust fund invested in such securities as they are invested in at the present time, or in securities authorized by the laws of the State of New York for investments by trust companies, and shall pay quarterly

⁴ Adapted from *Heise v. Wells* (1914), 211 N. Y. 1, 104 N. E. 1120.

(after deducting the expenses of administration, its commissions and charges, and the expenses of the upkeep of any properties belonging to said trust fund) the net rents, issues and incomes of the said trust fund, as follows:

(a) One-half part thereof to the First Party, during her lifetime, and

(b) The other one-half part thereof in equal shares to the children of the First Party at the time being surviving, including any after-born children.

SECOND: That, at the death of the First Party, the Second Party shall divide the rest, residue and remainder of said trust fund into as many equal parts, or shares, as the First Party shall, at that time, have children surviving, or the issue of any deceased child, or children, and shall pay over one such part, or share, to each surviving child and to the surviving issue of any deceased child, or children, the share or shares that their, or her, or his, parent, or parents, would have been entitled to, if living.

THIRD: That the Second Party is hereby authorized and empowered to sell, lease, or mortgage, any, or all, real estate hereinbefore conveyed, or hereafter to become a part of said trust fund, upon such terms as the Second Party may deem proper.

FOURTH: That the Second Party hereby accepts the said trust, and covenants that it will execute the same with all due fidelity; it being understood, however, that the Second Party shall not be held liable, or accountable, for any mere error of judgment in the execution of the said trust.

FIFTH: That the Second Party, or any of its successors in the trust, may, at any time, resign the said trust.

IN WITNESS WHEREOF, the First Party has hereunto set her hand and seal, and the Second Party has caused this instrument to be signed by its President, thereunto duly authorized, and its corporate seal to be affixed, attested by its Secretary, the day and year first above written.

Jane Doe (L.S.).
Roe Trust Company,
By Richard Roe,
President.

(Seal)

Attest:

John Jones,
Secretary.

[Annex Schedule of Property.]

No. 391.

Deed of trust by husband and wife, conveying real and personal property to trustee, to divide income equally between them, during their joint lives, and, upon death of either, to divide corpus into two equal parts, and transfer one to their then living child, or children, and to hold other part and pay income therefrom to survivor for life, and, upon survivor's death, to transfer such part to their then living child and children of any deceased child, and, upon death of both settlors, leaving no children, or grandchildren, to convey the part to husband's then surviving next of kin.⁵

THIS INDENTURE, made January 5, 1923, by John Doe, residing at No. 111½ Broadway, Borough of Manhattan, New York City, and Jane Doe, his wife, residing at the same place (herein called the "First Parties"), and Richard Roe, residing at No. 271½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

FIRST. That the First Parties:

(a) Hereby sell, convey, grant and release unto the Second Party, and to his successor, or successors, in said trusts,

ALL that certain lot, piece, or parcel, of land, situate, lying and being in the Borough of Manhattan, New York City, and bounded and described, as follows:

BEGINNING * * *

TOGETHER with the appurtenances and all the estate and rights of the First Parties in and to said premises, including the rights of dower of the said Jane Doe, but subject, nevertheless, to all liens and encumbrances thereon at present existing; and

(b) Hereby assign, transfer and set over unto the Second Party, his successors, or successor, all stocks, bonds, and other securities, cash in bank, and all other personal property belonging to them, at the time of the delivery of these presents, excepting jewelry, wearing apparel, horses and carriages and household furniture;

TO HAVE AND TO HOLD the above granted premises and the aforesaid personal property hereby assigned unto the Second Party, his

⁵ Adapted from *Cram v. Walker* (1916), 173 App. Div. 804, 160 N. Y. Supp. 486.

successors, or successor, forever, upon the trusts, nevertheless, and to, and for, the uses and purposes hereinafter limited, described and declared, that is to say:

1. To collect and receive the rents, issues and profits of said real estate and the income derived from the personal property; and, after paying therefrom, all taxes, assessments, water rates, interest, insurance, commissions and necessary charges for repairs to said premises, or for the protection and maintenance of the same, and of the said personal property, to pay over, from time to time, one equal half part, or moiety, thereof to the said Jane Doe, so long as she shall live, and the other equal half part, or moiety, thereof to the said John Doe, so long as he shall live.

2. Upon the death of either the said John Doe or Jane Doe, to divide the said real and personal property hereby conveyed and assigned into two equal parts, and to convey, transfer and set over one of said parts unto the then living child, or children, of the said First Parties and the then living issue of any deceased child, or children, of the said First Parties, *per stirpes* and not *per capita*, share and share alike; and to hold the other of said parts and pay over the income of the same to the survivor of said First Parties, during his, or her, life, as above provided.

3. Upon the death of said survivor, to convey, transfer and set over the equal one-half part of said property held in trust for his, or her, benefit, as aforesaid, to the then living child, or children, or the then living issue of any deceased child, or children, of said First Parties, *per stirpes* and not *per capita*, share and share alike.

4. In the event that either of the First Parties shall die, leaving no child, or children (issue of their marriage), or child, or children, of a deceased child (who was the issue of their marriage), surviving him, or her, then, upon the death of such of the First Parties as shall die first, to divide said real and personal property into two parts as aforesaid, and to convey, transfer, assign and deliver one of said parts unto the survivor of the First Parties, and to hold the other of said parts, during the life of said survivor, upon the same trusts created by article "FIRST" hereof, for the benefit of said survivor, and, upon the death of such survivor, to convey, assign, transfer and deliver the other part so held in trust unto the individuals, who, at such time, shall be the next of kin of said John Doe, according to the laws of the State of New York then in force and effect.

SECOND. If, at any time, it should, in the judgment of the trustee for the time being hereunder, be beneficial, or necessary, for the purposes of the trusts hereby created, or for the purposes of effecting the partition of said real estate and the division of said property as aforesaid, said First Parties hereby authorize and empower the said Second Party, his successors, or successor, to sell, lease, mortgage, convey and transfer the whole, or any part, of said real and personal estate, and, for such purpose, to execute all deeds and other instruments of transfer; but the proceeds realized from any such sale, or sales, shall be held by the Second Party, upon the trusts hereinbefore created.

THIRD. The said First Parties further agree to execute, or procure, any further, or necessary, assurances of the title to said premises, and all personal property hereby assigned, transferred, conveyed or so intended to be, that the Second Party may require.

FOURTH. The Second Party, by joining in the execution of this agreement, hereby accepts the foregoing trust, or trusts.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

John Doe (L.S.).

Jane Doe (L.S.).

Richard Roe (L.S.).

In the presence of
John Jones.

No. 392.

Trust indenture, providing for issue of one million dollars of ten year six per cent sinking fund gold bonds.⁶

THIS INDENTURE, dated this fifth day of January, 1923, between John Doe & Company, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 111½ Broadway, Borough of Manhattan, New York City (herein called the "Company"), party of the first part, and The Blank National Bank of the City of New York, a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 371½ Broadway, Borough of Manhattan,

⁶ Cf. *Louisville, etc., R. Co. v. Louisville Trust Co.* (1899), 174 U. S. 552, 19 Sup. Ct. Rep. 817, 43 Law ed. 1081; *American National Bank v. American Wood Paper Co.* (1895), 19 R. I. 149, 32 Atl. 305, 29 L. R. A. 103, 61 Am. St. Rep. 746.

New York City (herein called the "Trustee"), party of the second part, WITNESSETH:

WHEREAS, the Company has deemed it necessary to borrow money for its corporate purposes and, to that end, has duly authorized and directed an issue of bonds of an aggregate principal amount limited to one million dollars at any one time outstanding, to be designated as its Ten Year Six Per Cent Sinking Fund Gold Bonds, to be dated as of March 1, 1923, to mature March 1, 1933, to bear interest from March 1, 1923, at the rate of six (6%) per cent per annum, payable semi-annually on March 1st and September 1st in each year, to be signed in the Company's name by its President, or a Vice-President, impressed with its corporate seal, attested by its Secretary, or an Assistant Secretary, to have interest coupons attached executed with the facsimile signature of its present Treasurer, and to be authenticated by the certificate of the Trustee endorsed thereon, which Bonds, interest coupons and Trustee's certificate are to be, substantially, in the following terms, respectively:

[Form of Bond]

No. \$

UNITED STATES OF AMERICA

State of New York

John Doe & Company

Ten Year Six Per Cent Sinking Fund Gold Bond.

John Doe & Company (hereinafter called the "Company"), a corporation, duly organized under the laws of the State of New York, for value received, promises to pay to Bearer, or, if the ownership of this Bond shall be registered, to the registered holder hereof, the principal sum of dollars, on March 1, 1933, and to pay interest thereon from March 1, 1923, at the rate of six per cent per annum, semi-annually, on March 1 and September 1 in each year. Any such interest falling due at, or before, the maturity of this Bond shall be paid only upon the presentation and surrender of the attached interest coupons, as they severally mature.

Both principal and interest of this Bond are payable at the principal office of The Blank National Bank of the City of New York, in the Borough of Manhattan, City and State of New York, in gold coin of the United States of America of, or equal to, the present standard of weight and fineness, without deduction for any taxes, assessments, or impositions, which the Company, or the said Bank, may be required, or permitted, to pay thereon, or to retain, or deduct, therefrom, under any present, or future, law, except inheritance taxes, state income taxes and so much of any federal income taxes in respect of income derived from such interest as shall be in excess of two per cent thereof.

This is one of a duly authorized issue of coupon Bonds of the Company

of an aggregate principal amount not exceeding one million dollars at any one time outstanding, designated as its Ten Year Six Per Cent Sinking Fund Gold Bonds, all of like date and substantially similar tenor, except in respect of the denomination thereof, issued, and to be issued, under and subject to the provisions of a certain Indenture, dated January 5, 1923, executed by the Company and The Blank National Bank of the City of New York, as Trustee, to which Indenture reference is hereby made for a statement of the terms under which the said Bonds are issued, and of the rights and obligations of the Company, of the Trustee, and of the respective holders of the said Bonds thereunder.

In the said Indenture, the Company has covenanted that it will reimburse to the owner of this Bond the amount of any lawful personal property tax hereon, or in respect hereof, paid by him to the Commonwealth of Pennsylvania and/or to the State of Connecticut, not exceeding, in either case, four mills on each dollar of the value, or principal, hereof, but only upon receipt by the Company of the certificate of such payment and demand for reimbursement provided for in the said Indenture, within sixty days after the payment of the said tax.

In case of certain events of default by the Company, as set forth in the said Indenture, the principal of all of the outstanding Bonds of this issue may be declared due and payable before maturity, in the manner, and with the effect, therein provided.

At the option of the Company, the outstanding Bonds of this issue may be redeemed, as a whole or in part, on any semi-annual interest date prior to maturity, upon at least thirty days' prior published notice, at 105% of the principal amount thereof and accrued interest, as provided in the said Indenture. This Bond is entitled to the benefits of a sinking fund, as provided in the said Indenture.

This Bond shall pass by delivery, unless registered in the owner's name at the principal office of the said Trustee in the Borough of Manhattan, City and State of New York, such registration being noted hereon. After such registration, no transfer hereof shall be valid, unless made at the said office by the registered holder in person, or by duly authorized attorney, and similarly noted hereon; but this Bond may be discharged from registry by being, in like manner, transferred to bearer, and, thereupon, transferability by delivery shall be restored. This Bond shall continue to be subject to successive registrations and transfers to bearer, at the option of the holder; but no registration shall affect the negotiability of the interest coupons, which shall continue to be payable to bearer and transferable by delivery merely.

All rights of action on this Bond are vested in the Trustee under the said Indenture; and the holder hereof shall not be entitled to enforce the same except through the said Trustee, or except as otherwise provided in the said Indenture.

No recourse shall be had for the payment of either principal or interest of this Bond, or of any part thereof, or for any claim based hereon, or thereon, or otherwise, in any manner, in respect hereof, or in respect of the said Indenture, to, or against, any incorporator, stockholder, officer or director, past, present, or future, of the Company, or of any predecessor, or successor, corporation, either directly, or through the Company, or such predecessor, or successor corporation, whether by virtue of any constitution, or statute, or rule of law, or by the enforcement of any assessment, or penalty, or in any manner, all such liability being expressly waived and released by the acceptance hereof.

This Bond shall not be obligatory, or valid, for any purpose, until authenticated by the execution by the Trustee of the certificate endorsed hereon.

IN WITNESS WHEREOF, the Company has caused this Bond to be executed in its corporate name by its President, or a Vice-President, and impressed

with its corporate seal, attested by its Secretary, or an Assistant Secretary, and the attached interest coupons, to be executed with the facsimile signature of its Treasurer, as of March 1, 1923.

John Doe & Company,

By

President.

Attest:

Secretary.

[FORM OF INTEREST COUPON]

No: \$
 On the first day of....., 19...., unless the Bond herein mentioned shall have been called for previous redemption, John Doe & Company will pay to Bearer, at the principal office of The Blank National Bank of the City of New York, in the Borough of Manhattan, City and State of New York,.....Dollars, in United States gold coin, without deduction for taxes, except inheritance taxes, state income taxes and so much of any federal income taxes as may exceed two per cent of the face value hereof, being six months' interest then due on its Ten Year Six Per Cent Sinking Fund Gold Bond, No.....

Treasurer.

[FORM OF TRUSTEE'S CERTIFICATE]

This is one of the Bonds described in the within mentioned Indenture.
 The Blank National Bank of the City of New York,
 as Trustee,

By

Assistant Cashier.

AND WHEREAS, all things necessary to make the Bonds, when duly authenticated by the Trustee and issued as in this Indenture provided, the valid, binding and legal obligations of the Company have been done and performed, and the execution and delivery of this Indenture and the issue of the Bonds, as in this Indenture provided, have been in all respects duly authorized:

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That, in consideration of the premises and of the purchase and acceptance of the Bonds by those who shall hold the same from time to time, THE PARTIES HERETO HEREBY COVENANT AND AGREE, for the equal benefit and protection of those who shall hold the Bonds issued hereunder and the interest coupons pertaining thereto, without preference of any of the Bonds or interest coupons (except as stated in Section 1 of Article Fifth hereof) over any of the others by reason of priority in the time of issue, sale or negotiation thereof, as follows:

ARTICLE FIRST.

DESIGNATION, FORM, DENOMINATIONS, EXECUTION, AUTHENTICATION AND REGISTRATION OF BONDS.

SECTION 1. The Bonds to be issued under this Indenture shall be designated as the Company's "Ten Year Six Per Cent Sinking Fund Gold Bonds," and they, together with the interest coupons pertaining thereto, shall be substantially in the form and of the tenor hereinbefore recited, respectively.

SECTION 2. (a) Upon the execution hereof, the Company shall execute in the manner hereinbefore recited and deliver to the Trustee one million dollars, aggregate principal amount, of Bonds in the denominations of \$1,000 and \$500, in such amounts as to each denomination as the Company may determine; and the Trustee shall, thereupon, authenticate the Bonds and deliver the same to, or upon the written order of, the Company, signed by its President, or a Vice-President.

(b) The Bonds of the denomination of \$1,000 shall be numbered M-1 and consecutively upward, and those of the denomination of \$500 shall be numbered D-1 and consecutively upward.

(c) The Trustee shall not be under any obligation to see to the proper application of the Bonds, or of the proceeds thereof, by the Company.

SECTION 3. Only such Bonds as shall bear thereon endorsed a certificate substantially in the form hereinbefore recited, executed by the Trustee, shall be entitled to any right, or benefit, under this Indenture; and such authentication by the Trustee shall be conclusive evidence, and the only competent evidence, that any Bond so authenticated has been duly issued hereunder and that the holder is entitled to the benefits of this Indenture.

SECTION 4. (a) The holder of any definitive Bond may have the ownership thereof registered at the principal office of the Trustee in the Borough of Manhattan, City and State of New York, and have such registration noted on the Bond. After such registration, no further transfer of such Bond shall be valid, unless made at the said office by the registered holder in person, or by duly authorized attorney, and similarly noted on the Bond; but the same may be discharged from registry by being, in like manner, transferred to bearer, and, thereupon, transferability by delivery shall be restored.

Bonds shall continue to be subject to successive registrations and transfers to bearer, at the option of their respective holders; but no registration of any Bond shall affect the negotiability of the interest coupons pertaining thereto, which shall continue to be payable to bearer and transferable by delivery merely.

(b) The Trustee is hereby appointed Registrar for the purpose of registering, and with authority to register, the ownership of any of the Bonds, as herein provided.

SECTION 5. The Bonds may contain such further specifications, letters, numbers, or endorsements, as the Trustee, in its discretion, may require, in order to conform to any rule of any stock exchange, or to conform to any usage, in respect thereof.

SECTION 6. (a) Until definitive Bonds are prepared, the Company may execute and deliver one or more typewritten, or printed, temporary Bonds, substantially of the tenor of the Bonds hereinbefore recited, with, or without, coupons, except that such temporary Bonds shall not contain provisions for registration. Such temporary Bonds shall be of the denomination of \$500, or of any multiple thereof, as the Company may determine, and shall bear upon their face the words, "Temporary Bond: exchangeable for a like principal amount of definitive Bonds," and shall be authenticated by the Trustee in substantially the same manner as is herein provided for the definitive Bonds, except that the certificate of authentication may appear upon the face of the temporary Bonds instead of being endorsed thereon.

(b) Any, or all, such temporary Bonds duly issued and authenticated hereunder shall be exchangeable for a like principal amount of definitive Bonds, when such definitive Bonds are ready for delivery, and, upon any such exchange, the temporary Bond, or Bonds, shall forthwith be cancelled by the Trustee and delivered to, or upon the written order of, the Company. Until so exchanged, such temporary Bonds shall, in all respects, be entitled to the benefits of this Indenture, as Bonds issued and authenticated hereunder.

SECTION 7. (a) In case any Bond issued hereunder, with its interest coupons (if any), shall be mutilated, destroyed, or lost, the Company, in its discretion, may issue, and, thereupon, the Trustee shall authenticate and deliver, a new Bond of like denomination, tenor and date, in exchange and substitution for, and upon the cancellation of, the mutilated Bond and its interest coupons, or in lieu

of, and in substitution for, the Bond and its interest coupons so destroyed, or lost, upon receipt, in each case, of indemnity satisfactory to the Company and the Trustee, and, in any case of destruction, or loss, upon the receipt, also, of evidence thereof satisfactory to them. The Trustee may authenticate and deliver such substituted Bond, upon the written authority of the President, a Vice-President, the Secretary, or Treasurer, of the Company and shall incur no liability to any one by reason of anything done, or omitted, by it, in good faith, under the provisions of this Section.

(b) The Company may require the payment of all reasonable expenses incurred by it, or the Trustee, for each new Bond issued under this Section.

(c) The provisions of this Section shall apply to mutilated, lost, or destroyed, temporary Bonds, with, or without, coupons, and temporary Bonds with, or without, coupons, or definitive Bonds with coupons may be issued in lieu thereof, as in this Section provided.

ARTICLE SECOND.

COVENANTS OF THE COMPANY.

The Company covenants with the Trustee and with the respective holders of the Bonds, so long as any of the Bonds shall be outstanding, as follows:

SECTION 1. (a) The Company will duly and punctually pay the principal and interest of all the bonds duly issued hereunder, according to the terms thereof and of this Indenture, without deduction for any taxes, assessments, or impositions, which the Company, or the Trustee, may be required, or permitted, to pay thereon, or to retain, or deduct, therefrom under any present, or future, law, except inheritance taxes, state income taxes and so much of any federal income taxes in respect to income derived from such interest as shall be in excess of two per cent thereof.

(b) When, and as, paid, all interest coupons shall be cancelled and, upon its written request, shall be returned to the Company.

SECTION 2. The Company will reimburse to the owner of any Bond, or Bonds, the amount of any lawful personal property tax thereon, or in respect thereof, paid by him to the Commonwealth of Pennsylvania and/or to the State of Connecticut, not exceeding in either case four mills on each dollar of the value, or principal, of such Bond, or Bonds; *provided*, that, within sixty days after

the date of the payment of any such tax, such owner shall file with the Company, at its office, or agency, in the Borough of Manhattan, City and State of New York, a certificate, in writing, setting forth the respective serial numbers and denominations of the Bonds on which such tax was paid, and certifying to the fact of such payment and of his ownership thereof on the date on which the said tax was assessed, and requesting reimbursement of the amount thereof; *provided, further*, that the Company shall not be liable to reimburse any owner of any Bond for the amount of any such tax payment, unless request shall be made therefor within the said period of sixty days, and that, in no event, shall the Company be liable to reimburse any such owner for any interest, or penalty, assessed, or paid, in addition to the amount of the tax, as originally assessed.

SECTION 3. (a) The Company will, at all times, maintain an office, or agency, in the Borough of Manhattan, City and State of New York, where notices and demands in respect of the Bonds may be served; and it will, from time to time, give notice to the Trustee of the location of such office, or agency.

(b) In case the Company shall fail so to do, notices may be served and demands may be made at the principal office of the Trustee, in the said Borough of Manhattan, City and State of New York.

(c) The Company will, at all times, keep, or cause to be kept, at the said principal office of the Trustee, books in which the ownership of any of the definitive Bonds may be registered, upon presentation thereof for such purpose, as provided in Section 4 of Article First hereof.

SECTION 4. The Company will not directly, or indirectly, extend, or assent to the extension of, the time for the payment of any interest coupon, or claim, for interest of, or upon, any Bond, and it will not directly, or indirectly, be a party to any arrangement therefor, either by purchasing, or refunding, or, in any manner, keeping alive any such interest coupon, or claim for interest, or otherwise.

SECTION 5. The Company will comply with all lawful requirements of the laws of the State of New York, and of any other state, or states, of the United States of America, applicable to the Company; and it will not do, suffer, or permit, any act, or thing, whereby the payment of the indebtedness evidenced by the Bonds

issued hereunder might, or could, be hindered, delayed, or imperilled.

SECTION 6. (a) The Company represents and covenants that no mortgage, or other lien, exists upon its fixed, or permanent, assets (as defined in Section 19 of this Article), or any part thereof, except the two certain purchase money mortgages, dated May 10, 1922, made, executed and delivered by the Company to the Blank Manufacturing Company, securing indebtedness of \$200,000 aggregate principal amount.

(b) The Company will not create, or suffer to be created, any mortgage, or other lien, upon its fixed, or permanent, assets, or any part thereof, unless the total net assets of the Company (as defined in said Section 19 of this Article) shall be equal to at least 200% of the face amount of the Bonds then outstanding under this Indenture and of the bonds, or obligations, proposed to be issued under, or secured by, such mortgage, or other lien, and unless the Bonds then outstanding under this Indenture shall be secured by such mortgage, or other lien, equally and ratably with all bonds, or other obligations, issued, or to be issued, under, or secured by, such mortgage, or other lien.

(c) The restrictive provisions of this Section shall not apply, however, to the two existing mortgages above referred to, or to any purchase money mortgage given by the Company in part payment of the purchase price of any property hereafter acquired by it, or to any mortgage existing upon such property, at the time of the acquisition thereof, and subject to which the same is acquired; *provided* that such purchase money mortgage and/or mortgage existing upon any property so acquired, at the time of the acquisition thereof shall not separately or, in the aggregate, exceed 75% of the purchase price of such property.

(d) The term "purchase price," as used in this Section, shall be deemed to include, in addition to the amount of any cash payment, the principal amount, or amounts, of indebtedness, or obligations, secured by such purchase money mortgage and/or existing mortgage, or mortgages, upon such property.

(e) Except as otherwise permitted by this Section, the Company will not create, or assume, or guaranty, any indebtedness, or obligations, direct or contingent, maturing more than one year from their respective dates, other than rental, or employment, contracts, or contracts for construction, or equipment, or for purchase, or

sale, of materials, of finished products, made in the usual and ordinary course of business of the Company, and other than the Bonds to be issued under this Indenture.

SECTION 7. (a) The Company will not permit any constituent company (as defined in Section 19 of this article) :

(1) to incur, assume, or guarantee, any indebtedness except to the Company, other than indebtedness for payrolls, or for materials and supplies required in the usual and ordinary course of its business ;

(2) to issue (except to the Company) any bonds, debentures, notes, or other obligations ;

(3) to execute, or create, any mortgage, lien, or other incumbrance, upon any of the properties of such constituent company ; or

(4) to increase the amount of its capital stock issued and outstanding, unless effective provision shall be made so that the entire additional stock so issued shall forthwith, upon the issue thereof, be acquired by the Company.

(b) The restrictive provisions of this Section shall not apply, however, to any purchase money mortgage given by any constituent company in part payment of the purchase price of any property hereafter acquired by it, or to any mortgage existing upon such property, at the time of the acquisition thereof, and subject to which the same is acquired ; *provided*, that such purchase money mortgage and/or mortgage existing upon any property so acquired, at the time of the acquisition thereof, shall not separately, or in the aggregate, exceed 75% of the purchase price of such property.

(c) The term "purchase price," as used in this Section shall be deemed to include, in addition to the amount of any cash payment, the principal amount, or amounts, of indebtedness, or obligations, secured by such purchase money mortgage and/or existing mortgage or mortgages upon such property.

(d) The Company will exercise all lawful powers which, as stockholder or otherwise, it may possess, to the end that each constituent company shall preserve its corporate organization and existence (except as otherwise permitted by this Indenture) and do no act by which such constituent company might incur a forfeiture of its corporate existence.

SECTION 8. The Company will not sell, or otherwise dispose of, any of its fixed, or permanent, assets, nor will it permit any constituent company to sell, or otherwise dispose of, any of the fixed,

or permanent, assets of such constituent company, except for a fair and adequate consideration, and, in case of any such sale, the Company will retain the proceeds thereof in its business, or in the business of such constituent company, as the case may be, and will not distribute any part of such proceeds by way of a dividend, or distribution of capital, or profits; provided, that, at the option of the Company, such proceeds, or any part thereof, may be paid over to the Trustee, to be applied by it to the redemption of Bonds then outstanding hereunder, in the manner provided in Article Third hereof, or may be paid over to the Trustee, as an additional sinking fund payment, to be applied by it to the purchase, or redemption, of Bonds outstanding hereunder, in the manner provided in Article Fourth hereof.

SECTION 9. The Company will not lease any part of its fixed, or permanent, assets, nor will it permit any constituent company to lease any part of the fixed, or permanent, assets of such constituent company, except for a fair and adequate consideration; provided, however, that nothing contained in this Section shall prevent the Company from leasing any part of its fixed, or permanent, assets to a constituent company, during such time as said company shall continue to be a constituent company, or prevent a constituent company from leasing any part of its fixed, or permanent, assets to the Company.

SECTION 10. The Company will, at all times, have and maintain net quick assets (as defined in Section 19 of this Article) equal to at least 100% of the face amount of the Bonds then outstanding and in no event less than \$500,000; and the Company will not declare, or pay, or set aside, any dividends (other than dividends payable in shares of its stock) on capital stock, common or preferred, while the net quick assets of the Company are below an amount equal to 150% of the face amount of the Bonds then outstanding, or if the declaration, or payment, or setting aside, of any such dividend would reduce such net quick assets below said amount.

SECTION 11. The Company will (except as otherwise permitted by this Indenture) preserve its corporate existence and, at all times, diligently carry on and conduct its business and affairs, and will, at all times, maintain, preserve, and keep, and cause each of its constituent companies to maintain, preserve, and keep, all of its and their respective properties, buildings, machinery, apparatus,

equipment and fixtures (except such as it shall not be advantageous to operate) in thorough repair and condition, and will, from time to time, make, or cause to be made, all needful and proper repairs thereto and replacements thereof, and will promptly pay and discharge, or cause to be paid and discharged, any and all lawful taxes, rates, levies, assessments, liens, claims, or other charges, upon the said properties, and every part thereof, and upon the income derived from their operation; *provided*, that neither the Company nor any constituent company shall, at any time, be required to pay, or discharge, or cause to be paid, or discharged, any such tax, rate, levy, assessment, lien, claim, or other charge, so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, unless, in the opinion of the Trustee, property of the Company, or of a constituent company, shall thereby be in danger of being forfeited, or lost.

SECTION 12. (a) The Company will keep, and will cause each of its constituent companies to keep, its and their respective buildings, apparatus, equipment, fixtures, stock of materials and other properties insured in good and responsible insurance companies against loss, or damage, in such manner, and to the same extent, as is usual and customary with providently managed corporations engaged in the same, or similar, businesses, and will furnish, or cause to be furnished, to the Trustee, at least once in each calendar year, a schedule of all insurance in force, certified by the President, or a Vice-President, and the Secretary, or an Assistant-Secretary, of the Company. The Trustee shall be under no obligation to obtain any such schedule, and shall have no duty with respect thereto, except to exhibit the same to any holders of the Bonds desiring an inspection thereof.

(b) In case of loss of, or damage to, any of the said properties, whereby the sum of \$5,000, or more, shall be collected, or received, under any policy, or policies, of insurance, all such insurance moneys shall be applied either

(1) in, or toward, the restoration of the property so lost, or damaged, or

(2) in, or toward, the acquisition of other property for the use of the business of the corporation suffering such loss, or damage, the title to which shall be vested in it, or

(3) in, or toward, the construction of new buildings for such corporation, or

(4) in, or toward, the purchase of new machinery, equipment, apparatus, or fixtures, which shall constitute an addition, or additions, to the plant, of such corporation, but shall not constitute a replacement, or replacements, of old, or obsolete, machinery, equipment, apparatus, or fixtures, or

(5) the Company may retain such moneys, or the unexpended balance thereof, in its business, or in the business of such constituent company, as the case may be; *provided*, that the Company shall not distribute any part of such moneys by way of either a dividend, or a distribution of capital, or profits; and *provided, further*, that, at the option of the Company, any part of such moneys may be paid over to the Trustee, to be applied by it to the redemption of Bonds issued hereunder, in the manner provided in Article Third hereof, or may be paid over to the Trustee, as an additional sinking fund payment, to be applied by it to the purchase, or redemption, of Bonds issued hereunder, in the manner provided in Article Fourth hereof.

SECTION 13. (a) The Company will not consolidate with any corporation other than a constituent company, nor permit itself to be merged into any other corporation (whether or not such corporation shall be a constituent company), unless, prior thereto, it shall have secured all of the Bonds issued hereunder, then outstanding, by a closed first mortgage upon, and pledge of, all of its fixed, or permanent, assets.

(b) The Company will not convey, or transfer, its fixed, or permanent, assets, as a whole, or substantially so, unless effective provision shall have been made, or shall be simultaneously made, for the redemption, or retirement, of all of the Bonds then outstanding, in accordance with the provisions of this Indenture, or unless the corporation to which such property shall be sold shall assume the due and punctual payment of the principal of, and interest on, the Bonds and the performance and observance of all the covenants and provisions of this Indenture. In case the Company shall be consolidated with any corporation, or shall be merged into any other corporation, the corporation formed by such consolidation, or into which the Company shall be merged, shall, in like manner, assume the due and punctual payment of the principal of, and the interest on, the Bonds and the performance and observance of all the covenants and provisions of this Indenture. The corporation formed by any such consolidation, or into which the

Company shall have been merged, shall succeed to, and be substituted for, the Company, with the same effect as if it had been named herein as the party of the first part hereto.

SECTION 14. The Company will not sell, or otherwise dispose of, its investments in the stocks, bonds, notes, or other obligations of any constituent company, whether now owned, or hereafter acquired, except as an entirety; provided, however, that nothing contained in this Section shall prevent the Company from transferring a sufficient number of the voting shares of stock in any constituent company to qualify directors of such constituent company.

SECTION 15. (a) In case any controlled company shall increase the amount of its capital stock issued and outstanding, forthwith, upon the issue thereof, there shall be made effective provision for the acquisition by the Company of such part of such additional stock so issued, if any, as shall be necessary in order that said controlled company shall continue to be a controlled company.

(b) The term "controlled company," as used herein, shall mean any company, other than a constituent company, 51% or more, of the outstanding capital stock of which, having voting power, is at the time, owned by the Company, either directly, or through one or more other companies.

SECTION 16. The Company will not suffer, or permit, any constituent company to consolidate with, or be merged into, any other corporation, except the Company itself, or some other constituent company.

SECTION 17. The Company will, upon reasonable request, execute and deliver such further instrument, or instruments, and do such further acts as may be necessary, proper, or advisable, to carry out more effectually the purpose and intent of this Indenture, or to vest in any new, or successor, trustee appointed as herein provided, the powers and rights herein conferred upon the Trustee.

SECTION 18. (a) The Company will keep, and will cause each of its constituent companies to keep, true and accurate books of account showing its and their business transactions, and, at least once in each year, will take, or cause to be taken, inventories of its and their manufactured products on hand, raw materials in process of conversion, or available for conversion, into finished products, finished products and current supplies.

(b) The Company will furnish to the Trustee, semi-annually,

statements of the financial condition of itself and of its constituent companies, which statements shall include a consolidated balance sheet and a consolidated income account of the Company and its constituent companies, and, within sixty days after the close of each fiscal year of the Company, will furnish to the Trustee a statement of the financial condition of the Company and of its constituent companies as at the close of such fiscal year, which annual statement shall include a consolidated balance sheet and a consolidated income account of the Company and its constituent companies and shall be in such detail as the Trustee may reasonably require, and which annual statement shall be certified to by Messrs. Jones, Jones & Co., if they shall then be the accountants of the Company, or otherwise by some other certified, or chartered, public accountant, or accountants, who shall be satisfactory to the Trustee.

SECTION 19. (a) The term "constituent company," as used in this Indenture, shall mean and include any corporation the entire issued capital stock of which (except directors' qualifying shares) is now or, at any time, hereafter shall be owned by the Company, or by some other corporation of which the Company shall, at the time, own the entire issued capital stock, except directors' qualifying shares.

(b) The term "fixed, or permanent, assets," as used in this Indenture, shall mean and include any and all real estate, leases, land, buildings, machinery, plants, apparatus, equipment, patents, licenses, trade-marks, trade-names and any other items of property usually considered by banks and certified, or chartered, public accountants as fixed, or permanent, assets, whether now owned, or hereafter acquired, by the Company, or any constituent company, but not including good-will.

(c) The term "quick assets," as used in this Indenture, shall mean (1) cash on hand and in banks, other than moneys on deposit with the Trustee under this Indenture; (2) manufactured products on hand and not obsolete, raw materials in process of conversion into finished products, or available for immediate manufacture into finished products, if and when required, current supplies, such as coal, oil, fuel, and other like supplies, and readily marketable stock in trade, all inventoried at cost (exclusive of interest), or at market, whichever is less; (3) good, valid and collectible accounts receivable created within one year; (4) good, valid and collectible bills receivable maturing within one year from their respective

dates; (5) bonds and obligations of the United States Government and other readily marketable securities (except stock in a constituent company) taken at their fair market values; and (6) such prepaid charges and other items, if any, as are usually considered by banks and certified, or chartered, public accountants as current or quick assets. Quick assets located outside of the United States, or payable in a foreign currency, shall be valued in United States dollars at the then current rate or rates of exchange. Receivables, or other obligations, owing to the Company, or any constituent company, from any corporation in which the Company, or such constituent company, shall have a substantial holding of stock shall not be included in quick assets, if such receivables, or obligations, were issued, or created, to provide for capital expenditures.

(d) The term "current liabilities," as used in this Indenture, shall mean accrued unpaid taxes, insurance, rentals, royalties, license fees and all other indebtedness and liabilities, due or not due, direct or contingent, usually considered by banks and certified, or chartered, public accountants as liabilities which should appear on the balance sheet as current liabilities, except (1) the Bonds issued and outstanding under this Indenture and (2) any other obligations, or liabilities, maturing more than one year from their respective dates.

(e) The term "net quick assets," as used in this Indenture, shall mean quick assets less current liabilities, as such terms are herein defined.

(f) The term "total net assets," as used in this Indenture, shall mean the total fixed, or permanent, assets, excluding therefrom patents, trade-marks, trade-names and licenses (except prepaid license fees properly considered current, or quick), assets under subdivision (6) of sub-paragraph (c) of this Section and quick assets less the total current and other liabilities, whether due or not due, and whether direct or contingent, except the Bonds issued and outstanding under this Indenture.

(g) The terms "total net assets," "quick assets," "current liabilities" and "net quick assets," as in this Section above defined, and as used in this Indenture, shall include, in every case, the total net assets, the quick assets, the current liabilities and the net quick assets, as the case may be, of the Company and of its constituent companies, upon the basis of a consolidated balance sheet.

ARTICLE THIRD.

REDEMPTION OF BONDS.

SECTION 1. (a) At the option of the Company, all, or any, of the outstanding Bonds may be redeemed on any semi-annual interest date prior to maturity, at 105% of the principal amount thereof and accrued unpaid interest thereon to the redemption date.

(b) Whenever the Company shall desire so to redeem less than all the Bonds then outstanding, it shall notify the Trustee, in writing, of the aggregate principal amount of Bonds which it desires to redeem, specifying the interest date (which shall not be less than forty days after such notification) on which it desires to make redemption. As soon as practicable thereafter, the Trustee shall determine by lot the serial numbers of the Bonds to be redeemed; and shall notify the Company of the serial numbers of the Bonds so determined. The Company shall, thereupon, cause to be published in two newspapers, or financial journals, of general circulation in the Borough of Manhattan, City and State of New York, twice a week for four successive weeks (the first publication to be not less than thirty, nor more than thirty-five days prior to such redemption date), notice of such intended redemption, specifying the serial numbers of the Bonds to be redeemed and the date designated for redemption, and requiring that such Bonds be then presented for payment, at the principal office of the Trustee in the Borough of Manhattan, City and State of New York. If the ownership of any of the Bonds so to be redeemed shall be registered, the Company shall cause similar notice of redemption to be mailed to the respective registered holders thereof, at least thirty days prior to the redemption date, at their addresses appearing upon the bond registry books.

(c) In case the Company shall, at any time, desire to redeem all of the Bonds then outstanding, it shall give notice thereof, in like manner, by publication and mailing, except that the notice need not specify the serial numbers of the Bonds to be redeemed.

(d) The Company hereby irrevocably authorizes the Trustee to give the notice required by this Section for, and in the name of, the Company, and to do all things necessary hereunder, in order to redeem Bonds by application of the sinking fund, or by application of moneys paid to the Trustee, under any of the provisions of

this Indenture, when, under any of the provisions of this Indenture, it is required, or permitted, that the Trustee shall proceed to call Bonds for redemption.

SECTION 2. Notice of redemption having been given as provided in this Article, the Bonds designated for redemption shall, on the interest payment date designated in such notice, become due and payable, at the said principal office of the Trustee, at the redemption price prevailing on such interest payment date; and, from, and after, the date of redemption so designated (unless the Company shall make default in payment of the Bonds designated for redemption), interest on the Bonds designated for redemption shall cease to accrue; and, upon presentation at said principal office of the Trustee, in accordance with such notice, of the Bonds specified therein, together with all coupons thereto pertaining maturing on and after said redemption date, such Bonds shall be paid by the Company at the redemption price. If not so paid, upon such surrender thereof, said Bonds shall continue to bear interest at the rate therein expressed until payment.

SECTION 3. The Company shall, before the date specified for any such redemption, deposit with the Trustee an amount in cash sufficient to pay the principal, premium and interest on all Bonds called for redemption on such date.

SECTION 4. (a) On the deposit with the Trustee of the amount necessary so to redeem all of the Bonds outstanding, at the next redemption date, and on delivery to the Trustee of (1) proof satisfactory to the Trustee that notice of redemption thereof, at the next redemption date, has been given as aforesaid, or (2) proof satisfactory to the Trustee that arrangements have been made, insuring to the satisfaction of the Trustee, that such notice will be so given, or (3) a written instrument executed by the Company, under its corporate seal, and expressed to be irrevocable, authorizing the Trustee to give such notice for, and in the name of, the Company, and on payment to the Trustee of all costs, charges and expenses in relation thereto, or otherwise incurred hereunder, the Trustee shall cancel and satisfy this Indenture and assign, or cause to be assigned, and shall deliver to the Company, or upon its order, any property then held by it hereunder.

(b) The Trustee shall apply the moneys so deposited with it to the payment, at the redemption price aforesaid, of the Bonds so called for redemption, but shall, in no event, be liable beyond the

amount so deposited with it. Any moneys so deposited, which shall not be required for the purposes for which such deposit was made, shall be repaid to the Company, upon its written request; and any such moneys remaining unclaimed by the holders of Bonds and coupons, for six years after the specified redemption date, shall be paid by the Trustee to the Company, provided, however, that the Trustee, before being required to make any such payment, may, at the expense of the Company, cause notice that said moneys have not been so called for and that, after a date named therein, they will be returned to the Company, to be published once a week for four successive weeks in a newspaper, or financial journal, of general circulation in the Borough of Manhattan, in the City and State of New York.

ARTICLE FOURTH.

SINKING FUND.

SECTION 1. (a) As a sinking fund for the retirement of the Bonds, to be applied as hereinafter provided, the Company covenants and agrees that it will pay to the Trustee on September 1, 1923, and semi-annually thereafter, on the first day of March and the first day of September in each year, an amount in cash sufficient to purchase, or redeem, at 105% of the principal amount thereof and accrued interest, \$25,000 principal amount of the Bonds theretofore issued hereunder, or, in lieu of such payment in cash, in whole, or in part, will deliver to the Trustee for cancellation Bonds theretofore outstanding hereunder, with all unmatured coupons appertaining thereto; that is to say, on each semi-annual sinking fund payment date, the Company will deliver to the Trustee, for cancellation, \$25,000 principal amount of the Bonds, or, to the extent that it shall not so deliver Bonds, will pay to the Trustee cash in place of Bonds, at the rate of \$105 and accrued interest, for each \$100 principal amount of Bonds.

(b) The requirements of this Section are in addition to, and not in lieu of, the obligation of the Company to pay to the holders of the Bonds the interest accrued thereon to the date of any such sinking fund payments.

SECTION 2. (a) Upon the receipt of any such payment of cash for the sinking fund, the Trustee may, and, at the request in writing of the Company, shall, purchase in the open market, or at pri-

vate sale, or sales, or otherwise, at the best price, or prices, considered by the Trustee to be obtainable, as many of the Bonds as shall be required to equal, with any Bonds delivered for cancellation by the Company on account of the semi-annual sinking fund installment involved, \$25,000 principal amount of Bonds theretofore issued hereunder, provided that no such purchase of Bonds shall be made at a price exceeding 105% of the principal amount thereof and accrued interest.

(b) The Trustee may, and, if requested by the Company to do so, shall, publish a notice in one or more newspapers, or financial journals, of general circulation in the Borough of Manhattan, in the City and State of New York, twice a week for two successive weeks, that Bonds of the Company will be purchased by the Trustee for the sinking fund to an amount not exceeding an amount to be named in such notice (which shall be such an amount as will equal, with Bonds theretofore delivered by the Company, or theretofore purchased by the Trustee, \$25,000 principal amount of Bonds) and inviting offers to be submitted to the Trustee, within a period of time fixed in such notice, for the sale of such Bonds, at prices (not exceeding 105% of the principal amount thereof and accrued interest) to be stated in such offers; and, in that case, upon receipt of offers in accordance with such notice, the lowest offer, or offers, of an aggregate principal amount sufficient to equal, with Bonds so delivered by the Company, or purchased by the Trustee, \$25,000 principal amount of Bonds shall be accepted.

(c) If, prior to 40 days before the next succeeding redemption date, the retirement of \$25,000 principal amount of Bonds theretofore issued hereunder shall not have been effected, through the use, as hereinbefore provided, of the then last sinking fund installment, the moneys in the sinking fund shall be applied on such next succeeding redemption date to the redemption of Bonds, as provided in Article Third hereof, to such extent as shall be necessary, in order to effect the retirement of \$25,000 principal amount of Bonds with such sinking fund installment.

(d) Unless, at the time an event of default, as defined in Section 2 of Article Fifth hereof, shall exist, the balance of any amount paid into the sinking fund in respect of such sinking fund installment, after the retirement of \$25,000 principal amount of the Bonds, by surrender, purchase, or redemption, as above provided, shall be returned to the Company.

(e) The Company may exceed such sinking fund requirements in respect of any semi-annual sinking fund installment and have any excess of Bonds so retired credited against the sinking fund obligation on any subsequent sinking fund payment date, or dates.

(f) All bonds, which may be acquired, through the operation of the sinking fund, and the appurtenant coupons, shall be cancelled and shall be delivered to the Company by the Trustee, on its written application, and no Bonds shall be issued in lieu thereof.

ARTICLE FIFTH.

REMEDIES IN CASE OF DEFAULT.

SECTION 1. Neither (a) any coupon, or claim for interest on any Bond, which shall have been extended in contravention of the provisions of Section 4 of Article Second hereof, nor (b) any coupon, or claim for interest, which, in any way, at, or after, maturity, shall have been transferred, or pledged, separate, or apart, from the Bond to which it relates, unless accompanied by such Bond shall be entitled, in case of default hereunder, to any benefit of, or from, this Indenture, except after the prior payment in full of the principal of all of the Bonds and of all coupons and claims for interest not so extended, transferred, or pledged.

SECTION 2. In case any one, or more, of the following events, herein called "events of default," shall happen:

(a) Default in the payment of the principal of any of the Bonds when due, whether at maturity, by proceedings for redemption, by acceleration, or otherwise;

(b) Default in the payment of any installment of interest on any of the Bonds, or in the payment of any installment of the sinking fund, and such default shall have continued for the period of sixty days;

(c) Default in the performance, or observance, of any of the covenants, or agreements, contained in Sections 6, 7, 8, 9, 13, 14, 15, or 16, of Article Second hereof;

(d) Default in the performance, or observance, of any other covenant, condition, or agreements, on the part of the Company in the Bonds, or in this Indenture, contained, and such default shall have continued unremedied for a period of sixty days after written notice thereof shall have been given to the Company by the Trustee, which may give such notice, in its discretion, and shall do

so, upon the written request of the holders of ten per cent aggregate principal amount of the Bonds then outstanding;

(e) By decree of a court of competent jurisdiction, the Company shall be adjudicated a bankrupt, or, by order of any such court, a receiver of the Company, or of all, or a substantial part, of its property shall be appointed, or its business and affairs shall be directed to be liquidated, and any such order shall have been continued in effect for a period of sixty days, or the Company shall file a voluntary petition in bankruptcy or shall make an assignment for the benefit of creditors, or shall fail to meet its obligations, as they mature, in the usual course of business, or shall otherwise confess its insolvency; or

(f) By a decree of a court of competent jurisdiction any constituent company shall be adjudicated a bankrupt, or, by order of any such court, a receiver of any constituent company, or of all, or a substantial part of, its property shall be appointed, or its business and affairs shall be directed to be liquidated, and any such order shall have continued in effect for a period of sixty days, or any constituent company shall file a voluntary petition in bankruptcy, or if any important property of the Company, or of any constituent company, shall be seized upon any writ of attachment, or other legal process, and the Company, or such constituent company, shall not, within sixty days thereafter, cause such property to be released and discharged therefrom;

then, in each and every such case the Trustee, by written notice to the Company, may, and upon the written request of the holders of twenty-five per cent in aggregate principal amount of the Bonds then outstanding, shall, declare the principal of all of the Bonds then outstanding (if not then due and payable) to be immediately due and payable and, upon such declaration, the same shall become immediately due and payable, anything in this Indenture, or in the Bonds, contained to the contrary notwithstanding; *provided*, that if, at any time, either before, or after, the principal of the Bonds shall have become so due and payable, pursuant to declaration by the Trustee, all arrears of interest upon all of the Bonds, with interest on overdue installments of interest at the rate of six per cent per annum, together with the reasonable charges and expenses of the Trustee, its agents, attorneys and counsel shall have been paid by the Company, and any and every other default (known to the Trustee) by reason of which the principal of the Bonds

may, or might, have been declared due hereunder (regardless of any period of time during which such default shall have continued) shall have been remedied and made good to the satisfaction of the Trustee, then, in each such case, the holders of a majority in aggregate principal amount of the Bonds then outstanding, by written notice to the Company and to the Trustee, may waive all defaults so remedied and made good and their consequences and rescind any such declaration; but no such waiver shall extend to, or affect, any subsequent default, or impair any right consequent thereon.

SECTION 3. (a) If default shall be made by the Company in the payment of either principal, or interest, of any of the Bonds, whether the same shall become due by maturity, declaration, notice of redemption, or otherwise, then, in each such case, upon demand of the Trustee, the Company agrees to pay to the Trustee, for the benefit of the holders of the Bonds and/or interest coupons then outstanding, the whole amount then due and payable on all such outstanding Bonds, for principal, or interest, or for both principal and interest, as the case may be, with interest at the rate of six per cent per annum upon such principal, until the same shall have been paid in full, and interest at the same rate upon overdue installments of interest, and, in addition thereto, such further amount as shall be sufficient to cover the cost and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses, or liabilities, incurred by the Trustee hereunder; and, in case the Company shall fail to pay the same forthwith upon demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to recover judgment against the Company for the whole amount thereof, and to issue execution thereon against the whole, or any part, of the property of the Company, real or personal.

(b) Any moneys collected by the Trustee under this Section 3 shall be applied by the Trustee, subject to the provisions of Section 1 of this Article, as follows:

First. To the payment of the costs, expenses, fees, and other charges of collection, and a reasonable compensation to the Trustee, its agents, attorneys and counsel, and to the payment of all expenses and liabilities incurred, or disbursements made, by the Trustee;

Second. To the payment of the whole amount then due and

unpaid for either principal, or interest, or for both principal and interest, upon the Bonds, with interest on the overdue installments of interest at the rate of six per cent per annum; and, in case such proceeds shall be sufficient to pay in full the whole amount so due and unpaid, then to the payment of such principal and interest ratably, according to the aggregate of such principal and the accrued and unpaid interest, without preference, or priority, of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, except as otherwise provided in Section 1 of this Article.

Third. The remainder (if any) shall be paid to the Company, its successors, or assigns, or to whoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

SECTION 4. (a) All remedies conferred by this Indenture shall be deemed cumulative and not exclusive, and shall not be so construed as to deprive the Trustee of any legal, or equitable, remedy by judicial proceedings appropriate to enforce the conditions, covenants and agreements of this Indenture.

(b) No delay, or omission, by the Trustee, or by any holder of any Bond, to exercise any right, or power, arising from, or on account of, any default hereunder shall impair any such right, or power, or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee, or to the holders of the Bonds, may be exercised, from time to time, and as often as may be deemed expedient.

(c) Anything herein contained to the contrary notwithstanding, the holders of seventy-five per cent in aggregate principal amount of the Bonds outstanding hereunder, from time to time, shall have the right to direct and control the action of the Trustee in any proceedings taken by it to enforce the payment of the Bonds, or the performance of any of the covenants and conditions hereof, or in any other action, or proceeding, hereunder.

SECTION 5. Upon the written request of the holders of twenty-five per cent in principal amount of the Bonds then outstanding, in case the Company shall make default in any of its covenants hereunder, it shall be the duty of the Trustee, upon being indemnified as hereinafter provided, to take all steps needful for the protection and enforcement of its rights and the rights of the holders of the

Bonds, whether by judicial proceedings, or otherwise, as the Trustee, being advised by counsel, shall deem most expedient in the interest of the holders of the Bonds.

SECTION 6. (a) The Company, so far as it lawfully may, hereby agrees to, and hereby does, absolutely and irrevocably, waive and relinquish the benefit and advantage of any and all valuation, stay, appraisement, extension, or redemption, law, or laws, now existing, or which may hereafter be enacted, which, but for this agreement and waiver, might be applicable to any sale made under any judgment, order, or decree, based on any of the Bonds, or interest coupons, or this Indenture; and the Company, so far as it lawfully may, hereby agrees to, and hereby does absolutely and irrevocably, waive any and all rights of redemption, which it might, or could otherwise, have, or be entitled to, under any present, or future, law in respect of any sales of the properties, interests and rights of the Company, or any part thereof, under any judgment, or any direction, contained in any decree entered upon any of the Bonds, or interest coupons, issued hereunder, or for the enforcement hereof, or of any provision hereof; and the Company, so far as it lawfully may, hereby agrees that its successors, or assigns, will not, in any manner, set up, or seek to take any benefit or advantage of, any such present, or future, valuation, stay, appraisement, extension, or redemption, law, to prevent, or hinder, or delay, such absolute and irredeemable sale of said properties, interests and rights, as might, but for such law, be directed, or decreed, by a court of competent jurisdiction.

(b) If any law, such as is hereinabove in this Section 6 mentioned, or referred to, and now in force, of which the Company, or its successor, or successors, might take advantage despite the provisions hereof, shall hereafter be repealed, or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract contained herein, or to protect the Company against the operation, or application, of the provisions of this Section 6.

SECTION 7. No holder of any Bond issued hereunder shall have the right to institute any suit, action, or proceeding, at law or in equity, for the collection of any sum due from the Company on such Bond, for principal, or interest, or upon, or in respect of, this Indenture, or for the execution of any trust, or power, hereof, or for any other remedy under, or upon, this Indenture, unless such holder shall previously have given to the Trustee written notice of an

existing default, and unless, also, such holder shall have tendered to the Trustee security and indemnity satisfactory to it against all costs, expenses and liabilities, which might be incurred in, or by reason of, such action, suit, or proceeding, and unless, also, the holders of twenty-five per cent in aggregate principal amount of the Bonds then outstanding shall have requested the Trustee, in writing, to take action in respect of such default, and the Trustee shall have declined, or failed, to take such action within thirty days thereafter; it being intended that no one or more holders of Bonds shall have any right in any manner to enforce any right hereunder, or under, or in respect of, any of the Bonds, except in the manner herein provided, and for the equal, proportionate benefit of all holders of the outstanding Bonds.

ARTICLE SIXTH.

MISCELLANEOUS PROVISIONS.

SECTION 1. Any demand, request, or other instrument, required by this Indenture to be signed, or executed, by the holders of any Bonds may be in any number of concurrent writings of similar tenor, and may be signed, or executed, by such holders in person, or by attorney appointed in writing. Proof of the execution of any such demand, request, or other instrument, or of the writing appointing any such attorney, and of the holding by any person of any Bonds, shall be conclusive in favor of the Trustee and of the Company, with regard to due action taken by the Trustee, or by the Company, pursuant to such instrument, if such proof shall be made in the following manner:

(a) The fact and date of the execution by any person of any such demand, request, or other instrument, or writing, may be proved by the certificate of any notary public, or any officer of any jurisdiction, authorized by the laws thereof to take the acknowledgments of deeds to be recorded in any state within the United States of America, certifying that the person signing such request, or other instrument, acknowledged to him the execution thereof, or by an affidavit of a witness to such execution, duly sworn to before any such notary public, or other officer.

(b) The fact of the holding of any Bonds, the ownership of which shall not, at the time, be registered, and the amounts, and serial numbers, of such Bonds, and the date of holding the same,

may be proved by a certificate executed by any trust company, bank, banker, or other depository (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing that, at the date therein mentioned, the person named in such certificate had on deposit with, or exhibited to, such depository the Bonds described in such certificate. For all purposes of this Indenture and of any proceeding pursuant hereto for the enforcement hereof, or otherwise, such person shall be deemed to continue to be the holder of such Bonds, until the Trustee shall have received notice in writing to the contrary.

(c) The ownership of any Bonds, the ownership of which shall, at the time, be registered, shall be proved by the register of such Bonds.

SECTION 2. (a) As to all Bonds the ownership of which shall, at the time, be registered, the person in whose name the same shall be registered on the books of the Company shall, for all purposes of this Indenture, be deemed and regarded as the owner thereof, and payment of, or on account of, the principal of any such Bond shall be made only to, or upon, the order of such registered holder. Such payment shall be valid and effectual to satisfy and discharge the liability of the Company upon such Bonds, to the extent of the sum, or sums, so paid; and neither the Company nor the Trustee shall be affected by any notice to the contrary.

(b) The holder of any Bond the ownership of which shall not, at the time, be registered and the holder of any interest coupon pertaining to any Bond, whether the ownership of such Bond be registered, or not, and whether such Bond, or coupon, be overdue or not, shall, for all purposes of this Indenture, be treated as the absolute owner of such Bond, or interest coupon; and neither the Company nor the Trustee shall be affected by any notice to the contrary.

SECTION 3. No recourse shall be had for the payment of any part of either principal, or interest, of any Bond, or for any claim based thereon, or otherwise, in any manner in respect thereof, or in respect of this Indenture, to, or against, any incorporator, stockholder, officer, or director, past, present, or future, of the Company, or of any predecessor, or successor, corporation, either directly, or through the Company, or such predecessor, or successor, corporation, whether by virtue of any constitution, or statute, or rule of law, or by the enforcement of any assessment, or penalty, or in any manner.

SECTION 4. (a) Except when otherwise indicated, the word

"Trustee" shall be held and construed to mean the trustee for the time being, whether original or successor.

(b) The words "bond," "coupon" and "holder" shall include the plural as well as the singular number, and the word "holder" shall include the registered holder.

(c) The word "coupons" shall refer to the interest coupons appertaining to the bonds.

SECTION 5. If, and when, all of the Bonds, both principal and interest, shall be well and truly paid, at the times, and in the manner therein and herein expressed, according to the true tenor and effect hereof, this Indenture shall cease and determine; and, upon proof being given, to the reasonable satisfaction of the Trustee, that all of the Bonds and interest coupons have been paid, or satisfied, and upon payment of the costs, charges and expenses incurred, or to be incurred, by the Trustee in relation thereto, or in carrying out any and all of the provisions of this Indenture, the Trustee shall cancel this Indenture.

SECTION 6. (a) If, at the maturity of the Bonds, or prior thereto and subsequently to September 1, 1932, the Company shall deposit with the Trustee, for the benefit of the holder, or holders, thereof, the amount of the principal of all of the Bonds and of all of the interest coupons then outstanding due on the date of such maturity, together with all costs, charges and expenses incurred, or to be incurred, by the Trustee in relation thereto, or in carrying out any and all of the provisions of this Indenture, the Trustee shall cancel this Indenture.

(b) The Trustee shall apply the moneys so deposited to the payment of the Bonds and/or interest coupons, but shall, in no event, be liable beyond the amount received.

(c) Neither the Company nor the Trustee shall be required to pay interest on any moneys so deposited; and any such moneys remaining unclaimed for six years after the date of the maturity of the Bonds shall be repaid by the Trustee to the Company; *provided*, that, before being required to make any such repayment, the Trustee may, at the expense of the Company, cause to be published, once a week for four successive weeks, in a newspaper, or financial journal, of general circulation in the Borough of Manhattan, City of New York, that the said moneys have not been claimed and that, after a date named in such notice, the balance of such moneys then unclaimed will be returned to the Company.

SECTION 7. All of the covenants, stipulations and agreements in this Indenture contained by, or on behalf of, the Company, are and shall be for the sole and exclusive benefit of the parties hereto, and of the respective holders of the Bonds and interest coupons issued hereunder, and shall bind and apply to the successors and assigns of the Company, whether so expressed, or not. Whenever, in this Indenture, either of the parties hereto is referred to, such reference shall be deemed to include the successor, or successors, and assigns of such party, and all covenants, promises and agreements in this Indenture contained by, or on behalf of, the Company, or by, or on behalf of, the Trustee, shall bind and inure to the benefit of the respective successors and assigns of such party, whether so expressed or not.

ARTICLE SEVENTH.

CONCERNING THE TRUSTEE.

SECTION 1. The Trustee, for itself, and its successors, hereby accepts the trusts established by this Indenture, but only upon the terms and conditions hereof, including the following, all of which shall bind the Company and the holders of the Bonds and coupons pertaining thereto:

(a) It shall be no part of the duty of the Trustee to see to any recording, registry, or filing, of this Indenture, or of any supplemental indenture, or instrument of further assurance, or to give any notice thereof, or to effect, or renew, any insurance, or to see to the collection, or application, of any insurance moneys or to see to the payment of, or be under any duty in respect of, any tax, or assessment, or other governmental charge, which may be levied, or assessed, against the Company, or any constituent company, or against the owners, or holders, of the Bonds, or coupons, or to see to the performance, or observance, of any of the covenants, or agreements, hereof on the part of the Company.

(b) Unless and until the Trustee shall have received written notice to the contrary from the holders of not less than ten per cent in principal amount of the Bonds outstanding, it need take no notice of any default, or event of default, and may, for all purposes, conclusively assume that no default, or event of default, has occurred, or is continuing, and may so assume, unless the said notice shall distinctly specify the default desired to be brought to the attention of the Trustee and the continuance thereof.

(c) The Trustee shall not be required to take any action in respect of any default, or event of default, which, in its opinion, will be likely to involve it in expense, or liability, or to take any action towards the execution, or enforcement, of the trusts hereby created, or to institute, appear in, or defend, any action, suit, or other proceeding, in connection therewith, unless requested so to do by an instrument, in writing, signed by the holders of not less than one-fourth in principal amount of the Bonds then outstanding and unless tendered security and indemnity satisfactory to it against any and all costs, expense and liability, anything herein contained to the contrary notwithstanding; but neither any such notice, or request, nor this provision therefor, shall affect any discretion herein given to the Trustee, or which it may otherwise have, to determine whether or not the Trustee will take action in respect of such default, or event of default, or whether or not it will take action, without such request or indemnity.

(d) The Trustee shall not be required to recognize anyone as a holder of Bonds issued hereunder, unless and until the Bonds claimed to be held are submitted to the Trustee for inspection and title thereto established to its satisfaction.

(e) The Trustee shall not be compelled to do any act, or to make any payment, hereunder, or in respect hereof, unless put in funds for that purpose. Wherever any provision is made herein for the payment of moneys by the Trustee, at any time, whether in respect of the sinking fund, the redemption of all, or part, of the Bonds, the payment of the Bonds, or coupons, or otherwise, the Trustee shall, in no event, be liable to anyone beyond the amount of moneys deposited with it for any such purpose.

(f) All representations and recitals contained in this Indenture and in the Bonds and coupons (save only the certificate upon the Bonds that the same are issued hereunder) are made by and on behalf of the Company, and the Trustee is, in no way, responsible therefor, or for any statement herein contained, or for any action, or thing, by it done, or suffered, or permitted, by reason of any representation made by the Company, or any of its officers, or agents, and the Trustee makes no representations as to the value of the properties mentioned herein, or as to the title thereto, or as to the sufficiency of the security purported to be created hereby for the benefit of the holders of the Bonds, and the Trustee does not purport to have any knowledge in respect thereof.

(g) The Trustee shall not be responsible for the execution, or validity, hereof, or of any instrument supplemental hereto, or of the Bonds, and makes no representation in respect thereof. The Trustee shall be under no obligation to give notice to any person of the making of this Indenture, or of any supplemental indenture, or instrument of further assurance, or to see to the application of the proceeds of any insurance policy, or of the sale, or disposition, of any Bonds at any time authenticated by it hereunder.

(h) The Trustee shall be protected in acting upon any notice, demand, waiver, request, consent, opinion, certificate, report, statement, list, letter, telegram, bond, or other paper, or document, believed by it to be genuine and to have been signed, sent, or presented, by the proper party, or parties.

(i) The Trustee shall be under no obligation to make any investigation as to any statement made in any certificate, or other document, filed with it.

(j) The Trustee may exercise its powers and perform its duties by, or through, and may select and employ in and about the execution of the trusts hereby created, attorneys, appraisers, accountants, agents and other employees, whose reasonable compensation shall be deemed part of the expenses of the Trustee, and shall be paid by the Company, upon demand. The Trustee shall not be answerable for the act, default, or misconduct of any co-trustee hereunder, or of any attorney, accountant, agent, or other person, employed by it in pursuance hereof, if selected with reasonable care; nor shall the Trustee be liable for any action whatever by it hereunder, except its own wilful misconduct.

(k) The Trustee may advise with counsel (who may be counsel for the Company), and the opinion of counsel shall be full protection and justification to the Trustee for anything done, or omitted, or suffered to be done, by it, in accordance with such opinion.

(l) The Trustee, or any company, in which it, or its stockholders, may be interested, or any officer, or director, of the Trustee, or of any such company, may acquire and hold Bonds and coupons with the same rights, as though it were not Trustee hereunder.

(m) Any moneys, at any time received, or held, by the Trustee, under any of the provisions of this Indenture, or for the payment of the bonds, or coupons, upon redemption, or otherwise, may be treated by it as a general deposit, without any liability for interest save as, during that time, it shall agree with the Company

to pay thereon or, in the absence of any agreement in that respect, such as it shall pay, during the period when such moneys are held, on customers' general deposit accounts. The Trustee shall be under no duty to invest any such moneys.

(n) If the Trustee has knowledge of the existence of any event of default, or that any default has been made in the payment of interest on any of the Bonds, any moneys held by it and subject to payment, repayment, or reversion, to the Company need not be so paid, or repaid, but may be held by the Trustee as part of the trust estate, until such default, or event of default, has been remedied, or waived, pursuant to any of the provisions of said Article Five.

(o) Any action taken by the Trustee, upon the request, consent, or authority, of any bondholder shall be conclusive upon all future owners of any of the Bonds and of any Bonds issued in exchange therefor, or in place thereof, in respect of which such request, authority, or consent, was given.

SECTION 2. The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created, and the Company agrees, from time to time, to pay such compensation (which shall not be limited by any provisions of law with regard to compensation of fiduciaries, or of a trustee of an express trust), and to reimburse the Trustee and save it harmless against any and all liability and expenses, including counsel fees, which it may, at any time, incur hereunder; and the charges and expenses of the Trustee and of its counsel and all liability by it so incurred shall be secured by the lien of this Indenture upon any money, or property, at any time, subject hereto, prior to the Bonds and, if the Company shall fail, neglect, or delay, to pay the same promptly, it shall be paid from and out of any funds in the hands of the Trustee applicable thereto and/or from and out of the trust estate prior to any payment therefrom to, or upon, the order of the Company, or of, or on account of, any of the Bonds, or coupons.

SECTION 3. (a) The Trustee, or any successor, or successors, hereunder, may resign and be discharged of the trusts created by this Indenture by executing an instrument in writing resigning such trusts, specifying the date when such resignation shall take effect, and filing the same with the Company at least thirty (30) days (or such shorter time as may be accepted by the Board of Directors, or the Executive Committee, of the Company as ade-

quate) before such resignation is to take effect. Such resignation shall take effect on the day specified in such instrument, unless previously a successor trustee, or successor trustees, shall be appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee or trustees.

(b) The Trustee, or any successor hereunder, may be removed, at any time, by an instrument, or concurrent instruments, in writing, executed by the holders of a majority in principal amount of the Bonds then outstanding and filed with the Trustee; and, at any time prior to the authentication and delivery of any Bonds, or, if, at any time, all of the Bonds previously authenticated and delivered shall have been surrendered to the Trustee and no Bonds shall be outstanding hereunder, any trustee hereunder, original or successor, may be removed by an instrument in writing executed by the Company and filed in like manner; and, in such last mentioned case, the Company, by an instrument in writing, executed by order of its Board of Directors, or its Executive Committee, may appoint a successor to the trustee so removed.

(c) In case, at any time, the Trustee, or any successor, or successors, shall resign, or shall be removed by holders of the Bonds, or shall otherwise become incapable of acting, a successor, or successors, in the trust may be appointed by the Company, if, at the time of such resignation, the Company shall not be in default in any of its covenants herein expressed. If the Company shall be in default, then such successor, or successors, shall be appointed by the holders of a majority in principal amount of the Bonds then outstanding, by an instrument, or concurrent instruments, in writing signed by such holders of the Bonds, or their duly authorized attorneys in fact, and filed with the Company; provided, nevertheless, and it is hereby agreed and declared that, in case of any such resignation, removal, or other incapacity, the Company, by an instrument executed by order of its Board of Directors, or its Executive Committee, may, notwithstanding the existence of such default, appoint such successor, or successors, until a new trustee shall be appointed by the holders of the Bonds as herein authorized. The Company shall publish notice of any such appointment by it made at least once in each calendar week (in each instance upon any day of the week) for four (4) successive weeks in a newspaper of general circulation in the Borough of Manhattan, City of New York; but

any new trustee appointed by the Company shall immediately, and without further act, be superseded by a trustee appointed by the holders of the Bonds in the manner above provided.

(d) If, in a proper case, no appointment of a successor trustee shall be made pursuant to the foregoing provisions of this Article, within sixty (60) days after the resignation, or removal, of any trustee hereunder shall have taken effect, or after any trustee hereunder shall have become incapable of acting, any holder of Bonds, or the retiring trustee, may apply to any court (state or federal), having jurisdiction, to appoint a successor trustee, and such court may, if it deems proper, appoint a successor trustee.

(e) Every successor trustee hereunder shall be a national, or New York State, bank, or trust company, having an office in the Borough of Manhattan, in the City of New York, and having paid-up capital and surplus aggregating not less than \$2,000,000, unless there be no such bank, or trust company, fully authorized and qualified and willing to discharge the duties of trustee hereunder.

(f) If, at any time, or times, in order to conform to any legal requirement, the Company, or Trustee, shall so request, the Company and the Trustee shall have power to appoint and shall unite in the execution and delivery of all instruments and the performance of all acts necessary, or proper, to appoint some bank, or trust company, or one or more persons, approved by the Trustee, as additional trustee, or trustees, either to act as co-trustee, or co-trustees, hereunder, or as co-trustee, or co-trustees, of all, or any, of the property, or moneys (if any) at the time subject hereto, jointly with the Trustee originally named herein, or its successor, or successors, or to act as a separate trustee, or trustees, hereunder, or of any of such property, or moneys, and, in either case, with such of the rights, powers, duties and obligations hereby conferred, or imposed, upon the Trustee as shall be stated in such instrument of appointment, the same to be exercised either jointly with the Trustee, or separately as such instrument may prescribe, and the Company hereby irrevocably appoints the Trustee its agent, without any further act by the Company (whenever during the continuance of an event of default, as defined in Section 2 of Article Fifth hereof, the Company shall not, within thirty (30) days after request by the Trustee, join with it in any such appointment) to appoint any such additional trustee, or co-trustee, and to execute, deliver and perform any

and all instruments and agreements necessary, or proper, in connection therewith.

(g) Any new trustee appointed hereunder shall execute, acknowledge and deliver to its, or his, co-trustee, or co-trustees, if any, and, also, to the Company and to the retiring trustee, an instrument accepting such appointment hereunder, and, thereupon, such new trustee, without any further act, deed, or conveyance, shall become fully vested with all the properties and moneys (if any), interests, rights, powers, trusts, duties, and obligations of his, or its, predecessor in the trust, or, if a co-trustee hereunder, with all such thereof as shall be described, or set forth, in the instrument of its, or his, appointment, with like effect as if originally named as trustee herein and hereby vested with the same properties, interests, rights, powers, trusts, duties and obligations; but any trustee ceasing to act shall, nevertheless, upon the written request of the Company, or of the new trustee, execute and deliver an instrument transferring to such new trustee, or to such new trustee and its, or his, co-trustee, upon the trusts herein expressed, all of the properties, moneys, interests, rights, powers and trusts of the trustee so ceasing to act and shall duly assign, transfer and deliver all property and moneys held by, or for the account of, such trustee to the new trustee. Should any deed, conveyance, mortgage, or other instrument in writing, from the Company be required by the new trustee for more fully and certainly vesting in and confirming to such new trustee such properties, moneys, interests, rights, powers and duties, or any thereof, any and all such deeds, conveyances, mortgages and other instruments in writing shall, upon request, be executed, acknowledged and delivered by the Company.

(h) Any trustee, or trustees, hereunder may, so far as may be lawful, at any time, by an instrument in writing, constitute any other trustee hereunder its, his, or their, agent and attorney in fact, with power and authority, to the full extent which may be permitted by law, to do all acts and things and exercise all discretions hereunder in behalf and in the name of the trustee, or trustees, executing such instrument.

SECTION 4. (a) Any corporation into which the Trustee, or any successor to it in the trusts created by this Indenture, may be merged, or with which it, or any successor to it, may be consolidated, or any corporation resulting from any merger, or consolidation, to which the Trustee, or any such successor to it, shall be a

party, provided such corporation shall be a national, or New York State bank, or trust company authorized to transact business in the Borough of Manhattan in the City of New York, shall be the successor trustee under this Indenture, without the execution, or filing, of any paper, or other act upon the part of either of the parties hereto, anything herein to the contrary notwithstanding.

(b) In case any of the Bonds shall have been authenticated but not delivered, any such successor trustee may adopt the certificate of authentication of the Trustee, or of any successor, or successors, to it as such trustee hereunder, and may deliver such Bonds so authenticated; and, in case any of the Bonds shall not have been authenticated, any such successor trustee may authenticate such Bonds, either in the name of any predecessor trustee, or in the name of such successor trustee, and, in all such cases, such certificate shall have the full force which it is provided anywhere in said Bonds, or in this Indenture, that the certificate of the Trustees shall have.

SECTION 5. In all cases where this Indenture does not make other express provision as to the evidence upon which the Trustee may act, or refrain from acting, the Trustee shall be protected in acting, or refraining from acting, under any provision of this Indenture in reliance upon a certificate as to the existence or non-existence of any facts, signed by the President, or a Vice-President, of the Company, or signed by its Treasurer, or an Assistant Treasurer.

IN WITNESS WHEREOF, the Company and the Trustee have caused this Indenture to be signed by their respective Presidents, or Vice-Presidents, and their respective corporate seals to be hereto affixed, duly attested, as of the day and year first above written.

John Doe & Company,

(Seal)

By John Doe,
President.

Attest:

John Jones,
Secretary.

The Blank National Bank of the City of New York,
By Richard Roe,

(Seal)

President.

Attest:

John Smith,
Secretary.

No. 393.

Voting trust agreement.⁷

THIS AGREEMENT, made January 5, 1923, between the holders of stock of the Doe Railroad Company, a corporation of the States of New York and New Jersey, who shall become parties to this agreement by signing the same (herein called the "Subscribers"), parties of the first part, and John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, and Richard Roe and Henry Koe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Voting Trustees"), parties of the second part, WITNESSETH:

WHEREAS, each of the Subscribers represents that he is the owner of the number of shares of stock set opposite his signature hereto in the Doe Railroad Company (herein called the "Railroad Company"); and

WHEREAS, the Subscribers deem it to be greatly to the interests of said Railroad Company and of all the stockholders therein that this agreement should be made:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, AS FOLLOWS:

1. Each of the Subscribers agrees forthwith to deposit with the Voting Trustees, or with their authorized agent, the certificate, or certificates, for his said shares, together with a proper and sufficient instrument, duly executed, for the transfer thereof to the Voting Trustees.

2. (a) Upon deposit, as aforesaid, by any Subscriber of a certificate, or certificates, of stock hereunder, accompanied by a transfer as aforesaid, the Voting Trustees shall deliver, or cause to be delivered, to such Subscriber, or upon his order, their voting trust certificate, or certificates, for the same number of shares of common, or preferred, stock (as the case may be) of the Railroad Company as is represented by the certificate, or certificates, so deposited, which voting trust certificates so to be delivered upon deposit of common stock shall be in substantially the following form:

No.

Shares.

DOE RAILROAD COMPANY.

COMMON STOCK VOTING CERTIFICATE.

This certifies, that on January 4, 1928, will be entitled to receive a certificate, or certificates, expressed to be fully paid,

⁷ Adapted from *Hudson & Manhattan R. Co. v. State* (1919) 227 N. Y. 233, 125 N. E. 202.

for.....shares of \$100 each of the common stock of the Doe Railroad Company, a corporation of the States of New York and New Jersey, and, in the meantime, to receive payments equal to the dividends, if any, collected by the Voting Trustees hereinafter mentioned upon a like number of said shares of stock; and, until after the actual delivery of such certificates, the Voting Trustees shall, in respect of any and all such stock, possess and be entitled to exercise, except as otherwise expressly provided in the agreement hereinafter mentioned, all stockholders' rights of every kind, including the right to vote and to take part in, or consent to, any corporate or stockholders' action, it being expressly stipulated that no right to vote or to take part in or consent to any corporate or stockholders' action passes by or under this certificate or by or under any agreement, express or implied.

This certificate is issued under and pursuant to, and the rights of the holders are subject to and limited by, the terms and conditions of a certain agreement dated the 5th day of January, 1923, between the holders of common stock of said Railroad Company and John Doe, Richard Roe and Henry Koe, and successors, as Voting Trustees, copies whereof are filed with Smith & Sons and with the said Railroad Company.

No stock certificate shall be due, or deliverable, hereunder before the 4th day of January, 1928, but the Voting Trustees, in their discretion, may make earlier delivery, as provided in said agreement.

This certificate is transferable only on the books of the Voting Trustees, by the registered holder thereof in person, or by attorney, according to the rules established for that purpose by the Voting Trustees, and on surrender hereof. Until so transferred, the Voting Trustees may treat the registered holder as owner hereof for all purposes whatsoever.

This certificate is not valid, unless duly signed on behalf of the Voting Trustees by Smith & Sons, their agents, and also registered by the Doe Exchange National Bank as registrar.

In witness whereof, the Voting Trustees have caused this certificate to be signed by Smith & Sons, their duly authorized agents hereunder, this

John Doe,
Richard Roe,
Henry Koe,
Voting Trustees.
By Smith & Sons,
Agents.

and the voting trust certificates to be so delivered upon deposit of preferred stock, if any, shall be in substantially the same form, except that "preferred" shall be substituted for "common" where appropriate therein.

(b) Smith & Sons are hereby authorized by the Voting Trustees to sign, and, on registration, deliver voting trust certificates as agents of the Voting Trustees.

(c) Said voting trust certificate shall be transferred as therein provided, and not otherwise, and transfer so made of any such certificate shall vest in the transferee all rights and interests of the transferor in and under such certificate, and, upon such transfer, the Voting Trustees will deliver, or cause to be delivered, a voting trust certificate, or certificates, to the transferee for the same

number of shares and of the same class as the voting trust certificate so transferred. Until such transfer, the Voting Trustees may treat the registered holder of the voting trust certificate as owner thereof for all purposes whatsoever.

3. Shares of stock of the Railroad Company, certificates for which shall be deposited hereunder with the Voting Trustees, shall be vested in the Voting Trustees and shall be transferred to the name of the Voting Trustees upon the books of the Railroad Company, and until after the actual delivery of certificates for said stock to the holders of the voting trust certificates, in accordance with the provisions of this agreement, the Voting Trustees shall, in respect of all stock so held by them, possess and be entitled to exercise all stockholders' rights of every kind, including the right to vote and to take part in, or consent to, any corporate, or stockholders', action, and to receive dividends on said stock; and it is expressly understood and agreed that the holders of voting trust certificates shall not have any right, with respect to any such stock held by the Voting Trustees, to vote, or take part in, or consent to, any corporate, or stockholders', action of the Railroad Company.

4. The holder of each voting trust certificate shall be entitled, until distribution of stock in the Railroad Company as hereinafter provided for, to receive, from time to time, payments equal to the dividends, if any, collected by the Voting Trustees upon the like number of shares of common or preferred stock (as the case may be) of the Railroad Company as is specified in such voting trust certificate.

5. On January 4, 1928, or on such earlier date as the Voting Trustees shall, in their discretion, determine, the Voting Trustees shall distribute the stock of the Railroad Company held by them to the holders of the voting trust certificates as follows, that is to say, they shall, upon presentation and surrender, on or after said date of voting trust certificates, accompanied by properly executed transfers thereof to the Voting Trustees, deliver certificates of stock of the Railroad Company for the shares specified in the voting trust certificates so surrendered.

6. All questions arising among the Voting Trustees shall be determined by a decision of a majority of them. The Voting Trustees may, in all matters, act either at a meeting, or by writing

with or without meeting, and the decision, or act, of a majority of the Voting Trustees shall, in all matters, including the exercise of the voting power, be deemed the decision, or act, of all the Voting Trustees.

7. (a) Any of the Voting Trustees may, at any time, resign, by delivering to the other Voting Trustees his resignation in writing; and, in every case of death, resignation, or vacancy, the vacancy so occurring shall be filled by the appointment of a successor by the remaining Voting Trustees, or Trustee, in writing; and such successor shall, from the time of such appointment, be deemed a Voting Trustee hereunder, and have all the estate, title, rights and powers of a Voting Trustee hereunder; and all acts and instruments shall be done and executed, which shall be necessary, or reasonably requested, for the purpose of effecting such succession, and of making the Voting Trustees, as they shall exist upon such appointment, the owners of record of the stock deposited as aforesaid with the Voting Trustees.

(b) No Voting Trustee shall be liable for any error of judgment, or mistake of law, or other mistake, or for anything, save only his own wilful misconduct, or gross negligence.

8. (a) In voting upon said shares of stock, or doing any act with respect to the control, or management of the Railroad Company or its affairs, as holders of the stock deposited hereunder, the Voting Trustees shall exercise their best judgment in the interests of the Railroad Company, and to the end that its affairs shall be properly managed.

(b) The Voting Trustees may vote on said stock in person or by such person or persons as they shall select as their proxy.

9. Any holder of any stock of the Railroad Company may, at any time, become a subscriber hereto with respect to any such stock, by subscribing this agreement and depositing the certificates of his stock, as aforesaid, accompanied by duly executed transfer as above provided, and shall thereupon, and thereafter, be deemed and be a subscriber hereunder.

10. This agreement may be executed in several parts of like form, each of which, when executed, shall be deemed to be an original; and such parts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the several parties hereto have respec-

tively signed and sealed this agreement, the day and year first above written.

John Doe (L.S.),
Richard Roe (L.S.),
Henry Koe (L.S.),
Voting Trustees.

<i>Subscribers.</i>	<i>No. of Shares.</i>	<i>Common.</i>	<i>Preferred.</i>
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CHAPTER XXIII
VENDOR AND VENDEE

Section 1.—Agreements.

- No. 394—Agreement to exchange real estate.
No. 395—Agreement to sell real estate.
No. 396—Agreement to sell real estate, upon installment plan.
No. 397—Same—another form.
No. 398—Agreement to sell block of real estate, conditioned upon vendor receiving deed from referee in foreclosure action.

Section 2.—Miscellany.

- No. 399—Clause providing for effect of fire.
No. 400—Clause providing that premises sold are to be vacant.
No. 401—Covenant by vendee to pay for coal in premises to be purchased, and designating firm to appraise the quantity thereof.
No. 402—Clause requiring vendor to convey title free from all except certain incumbrances.
No. 403—Clause requiring vendor to pay taxes, etc., which become a lien, prior to delivery of deed.

SECTION 1.—AGREEMENTS.

No. 394.

Agreement to exchange real estate.¹

AGREEMENT, FOR THE EXCHANGE OF PROPERTY, made and dated January 5th, 1923, between John Doe & Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan,

¹ Adapted from the form prepared and used by the Lawyers Title and Trust Company, New York City.

New York City, herein designated as the party of the first part, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, herein designated as the party of the second part, WITNESSETH:

1. The party of the first part, in consideration of one dollar, the receipt of which is hereby acknowledged, and, also, in consideration of the conveyance by the party of the second part of the premises hereinafter secondly described, hereby agrees to sell and convey to the party of the second part, at a valuation for the purposes of this contract of two hundred and fifty-five thousand (\$255,000) dollars,

ALL that lot or parcel of land, with the buildings and improvements thereon, in the Borough of Manhattan, New York City, and more particularly bounded and described, as follows:

BEGINNING * * *

2. The party of the second part, in consideration of one dollar paid, the receipt of which is hereby acknowledged, and, also, in consideration of such conveyance by the party of the first part, agrees to sell and convey to the party of the first part, at a valuation for the purposes of this contract of two hundred and thirty-five thousand (\$235,000) dollars,

ALL that lot or parcel of land, with the buildings and improvements thereon, in the Borough of Manhattan, New York City, and more particularly bounded and described, as follows:

BEGINNING * * *

3. The premises which are to be conveyed by the party of the first part are to be conveyed subject to the following incumbrances:

(a) A mortgage, now a lien upon the said premises, originally given to secure the sum of two hundred thousand (\$200,000) dollars, upon which there is now due the sum of one hundred and seventy-five thousand (\$175,000) dollars, and the balance of the principal of which mortgage is payable, as follows:

(1) Seventy-five hundred (\$7,500) dollars on August 15, 1923;

(2) Seventy-five hundred (\$7,500) dollars on August 15, 1924; and

(3) The balance on May 15, 1925, and which mortgage bears interest at the rate of four and one-half (4½%) per cent per annum, payable semi-annually, and which mortgage was recorded in the office of the register of the county of New York, in Liber 295A, Section 8 of Mortgages, page 201a.

(b) All rights of the lessees and tenants of or in said premises, or any part thereof.

(c) A state of facts shown on a survey made by Henry Koe, and dated July 10, 1915.

4. The premises which are to be conveyed by the party of the second part are to be conveyed subject to the following incumbrances:

(a) A mortgage, now a lien upon the said premises, originally given to secure the sum of one hundred and seventy-five thousand (\$175,000) dollars, upon which there is now due the sum of one hundred and fifty thousand (\$150,000) dollars, and the balance of the principal of which mortgage, with interest at the rate of five and one-half ($5\frac{1}{2}\%$) per cent per annum, payable semi-annually, is due and payable (under and by virtue of an extension agreement between the party of the second part and John Smith, the mortgagee therein named, bearing date of September 10, 1922), as follows:

(1) Two thousand (\$2,000) dollars thereof on January 10, 1923, and a like sum semi-annually thereafter until two years hence; and the balance of the principal sum, to wit, the sum of one hundred and forty-two thousand (\$142,000) dollars, on January 10th, 1925.

(b) A mortgage, now a lien upon the said premises, given to secure the sum of forty thousand (\$40,000) dollars, which bears interest at the rate of six (6%) per cent per annum, and the principal of which is due and payable on January 5, 1928, which mortgage was recorded in the office of the register of the county of New York, in Liber 68A, Section 8 of Mortgages, at page 131a.

(c) All rights of the lessees and tenants of or in said premises, or any part thereof.

(d) A state of facts shown on a survey made by Charles Brown, and dated May 5, 1918.

5. The difference between the values of the respective premises, over and above incumbrances shall be deemed, for the purposes of this contract, to be thirty-five thousand (\$35,000) dollars, and that sum shall be due and payable by the party of the second part, as follows:

(a) Five thousand (\$5,000) dollars, upon the signing of this contract, the receipt whereof is hereby acknowledged, and which said sum of five thousand (\$5,000) dollars is to be held by the Doe

Title Insurance Company, pending the consummation of this contract, and, at its consummation, is to be delivered to the party of the first part.

(b) Thirty thousand (\$30,000) dollars, by cash, or certified check, which cash is to be paid, or which certified check is to be delivered, to the party of the first part, upon the exchange of the deeds as herein provided.

6. Said premises are sold subject to building restrictions and regulations in resolution or ordinance adopted by the Board of Estimate and Apportionment of the City of New York, July 25, 1916, and amendments and additions thereto now in force.

7. The deeds shall be delivered and exchanged upon the receipt of said payments at the office of John Doe & Co., Inc., No. 11½ Broadway, Borough of Manhattan, New York City, at 10 o'clock, A.M., on March 8th, 1923.

8. Rents and interest on mortgages, rents of gas ranges, all insurance premiums, if any, are to be apportioned.

9. If there be a water meter on either of the premises, the seller thereof shall furnish a reading to a date not more than thirty days prior to date herein set for closing title and the unfixed meter charge for the intervening time shall be apportioned on the basis of such last meter reading.

10. If, at the time for the delivery of the deeds, either of the premises or any part thereof shall be or shall have been affected by any assessment or assessments which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the seller thereof upon the delivery of the deed.

11. Each deed shall be in proper statutory form for record, shall contain the usual full covenants and warranty, and shall be duly executed and acknowledged by the seller, at the seller's expense, so as to convey to the purchaser the fee simple of the premises respectively therein described free of all incumbrances except as herein stated.

12. This sale covers all right, title and interest of the seller of, in and to any land lying in the bed of any street, road or avenue,

opened or proposed, in front of or adjoining said premises, to the center line thereof, or all right, title and interest of seller in and to any award made or to be made in lieu thereof, and the seller will execute and deliver to the purchaser, on closing of title, or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of such award.

13. All personal property appurtenant to or used in the operation of either of said demises is represented to be owned by the seller thereof and is included in this sale.

14. All notes or notices of violation of law or municipal ordinances, orders or requirements noted in or issued by any Department of the City of New York against or affecting the premises at the date hereof, shall be complied with by the seller and the premises shall be conveyed free of the same. The seller shall furnish the purchaser with an authorization to make the necessary searches therefor.

15. All sums paid on account of this contract and the reasonable expense of the examination of the title to said premises are hereby made liens thereon, but such liens shall not continue after default by the purchaser under this contract.

16. The risk of loss or damage to said premises by fire until the delivery of the deed is assumed by the seller of each of said premises respectively.

17. The stipulations herein are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

WITNESS the signatures and seals of the above parties.

John Doe & Co., Inc.,

By John Doe,
President.

(Seal)

Attest:

John Jones,
Secretary.

Richard Roe (L.S.).

In the presence of
Thomas Brown.

No. 395.

Agreement to sell real estate.²

AGREEMENT, made and dated January 5, 1923, between John Doe, residing at No. 11½ Broadway, Borough of Manhattan, New York City, hereinafter described as the seller, and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City, hereinafter described as the purchaser, WITNESSETH:

FIRST: That the seller agrees to sell and convey and the purchaser agrees to purchase all that lot or parcel of land, with the buildings and improvements thereon, in the Borough of Manhattan, New York City, and more particularly bounded and described, as follows:

BEGINNING * * *

SECOND: The premises, which are to be conveyed by the seller, are to be conveyed subject to the following incumbrances:

(a) A mortgage, now a lien upon the said premises, originally given to secure the sum of two hundred thousand (\$200,000) dollars, upon which there is now due the sum of one hundred and seventy-five thousand (\$175,000) dollars, and the balance of the principal of which mortgage is payable, as follows:

(1) Seventy-five hundred (\$7,500) dollars on August 15, 1923;

(2) Seventy-five hundred (\$7,500) dollars on August 15, 1924; and

(3) The balance on May 15, 1925, and which mortgage bears interest at the rate of four and one-half (4½%) per cent per annum, payable semi-annually, and which mortgage was recorded in the office of the register of the county of New York, in Liber 295A, Section 8 of Mortgages, page 201a.

(b) All rights of the lessees and tenants of or in said premises, or any part thereof.

(c) A state of facts shown on a survey made by Henry Koe, and dated January 10, 1915.

THIRD: That the purchaser shall pay for the premises, which are to be conveyed by the seller to the purchaser, the sum of two hundred and fifty thousand (\$250,000) dollars, payable, as follows:

² Adapted from the form prepared and used by the Lawyers Title and Trust Company, New York City.

(a) Ten thousand (\$10,000) dollars, upon the signing of this contract, the receipt whereof is hereby acknowledged.

(b) Sixty-five thousand (\$65,000) dollars, by cash, or certified check, which cash shall be paid, or certified check delivered, to the seller, upon the execution of the deed herein provided for.

(c) One hundred and seventy-five thousand (\$175,000) dollars, by taking the premises subject to the mortgage described in paragraph "SECOND" hereof.

FOURTH: That said premises are sold subject to:

1. Building restrictions and regulations in resolution or ordinance adopted by the Board of Estimate and Apportionment of the City of New York, July 25, 1916, and amendments and additions thereto now in force.

2. Encroachments of stoops, areas or cellar steps, if any, upon any street or highway.

FIFTH: All personal property appurtenant to or used in the operation of said premises is represented to be owned by the seller and is included in this sale.

SIXTH: This sale covers all right, title and interest of the seller of, in and to any land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining said premises, to the center line thereof, and all right, title and interest of seller in and to any award made or to be made in lieu thereof, and in any award for damage to said premises by reason of change of grade or any street; and the seller will execute and deliver to the purchaser, on closing of title, or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of any such award.

SEVENTH: If at the time of the delivery of the deed the premises or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments, of which the first installment is then a charge or lien or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the seller upon the delivery of the deed.

EIGHTH: The following are to be apportioned:

1. Rents and interest on mortgages.
2. Rents of gas ranges.
3. Insurance premiums on existing policies.
4. Taxes and water rates for the calendar year.

NINTH: If there be a water meter on the premises, the seller shall furnish a reading to a date not more than thirty days prior to the time herein set for closing title and the unfixed meter charge for the intervening time shall be apportioned on the basis of such last reading.

TENTH: All notes or notices of violation of law or municipal ordinances, orders or requirements noted in or issued by the Tenement House Department, Fire Department, Building Department, Labor Department, Health Department or any other State or Municipal Department having jurisdiction, against or affecting the premises at the date hereof, shall be complied with by the seller and the premises shall be conveyed free of the same, and this provision of this contract shall survive the delivery of the deed hereunder. The seller shall furnish the purchaser with an authorization to make the necessary searches therefor.

ELEVENTH: The deed shall be in proper statutory short form for record, shall contain the usual full covenants and warranty, and shall be duly executed and acknowledged by the seller, at the seller's expense, so as to convey to the purchaser the fee simple of the said premises, free of all encumbrances except as herein stated.

TWELFTH: All sums paid on account of this contract, and the reasonable expense of the examination of the title to said premises, are hereby made liens thereon, but such liens shall not continue after default by the purchaser under this contract.

THIRTEENTH: The risk of loss or damage to said premises by fire until the delivery of the deed is assumed by the seller.

FOURTEENTH: The deed shall be delivered upon the receipt of said payments at the office of John Doe, No. 11½ Broadway, Borough of Manhattan, New York City, at 10 o'clock, A.M., on March 8, 1923.

FIFTEENTH: The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

SIXTEENTH: The seller agrees that Charles Brown brought about this sale and agrees to pay the broker's commission therefor.

WITNESS the signatures and seals of the above parties.

John Doe (L.S.).

Richard Roe (L.S.).

In the presence of

John Jones.

No. 396.

Agreement to sell real estate, upon installment plan.³

AGREEMENT, made January 5, 1923, between John Doe Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The First Party agrees to sell to the Second Party, upon the terms and conditions hereinafter set forth, the premises, situate, lying and being in the Town of Doeville, County of Nassau, State of New York, and bounded and described as follows:

BEGINNING * * *

2. The Second Party agrees to purchase said premises, upon the terms and conditions hereinafter set forth, and to pay therefor the sum of six thousand and sixty (\$6,060) dollars, in lawful money of the United States of America, in the manner following, *viz.*:

(a) By paying the sum of six hundred and six (\$606) dollars, upon the signing and delivery of this agreement, the receipt of which sum is hereby acknowledged; and

(b) By paying the further sum of sixty (\$60) dollars on the 5th day of each and every month following the date hereof, until the whole of said principal sum, with interest at six (6%) per cent per annum on all unpaid balances, shall have been fully paid by the Second Party.

3. The Second Party shall, also, pay all taxes, or other, assess-

³ Adapted from *Coyne v. Valley Stream Realty Co.* (1916), 219 N. Y. 609, 114 N. E. 1063.

ments, in respect of said premises, which may be made, or levied, after one year subsequent to the date hereof.

4. It is further mutually agreed by the parties hereto, as follows:

(a) That all sums of money payable hereunder to the First Party shall, until further written notice, be paid to the First Party, at its office, at No. 111½ Broadway, Borough of Manhattan, New York City, during its regular office hours, and the receipt of said First Party shall be sufficient discharge therefor. All payments made elsewhere, to whomsoever made, shall be made, at the sole risk of the Second Party.

(b) That prompt performance and time are of the essence of this contract, and of each of its conditions; and, if the Second Party shall default in paying any one of the monthly installments of the aforesaid principal sum for a period of sixty (60) days after the same shall have become due, or if the Second Party shall fail to perform any one of the agreements upon the part of the Second Party herein contained, then, and in any such event, the balance of the principal sum then remaining unpaid shall immediately become due and payable, or, at the option of the First Party, all rights of the Second Party, under this agreement, and all the Second Party's right, title and interest and claim in and to the said described premises, shall become void and of no effect; and upon the exercise of such option, the said First Party shall be released from all obligations hereunder, and all moneys theretofore paid hereon, or hereunder, shall be held by the First Party, without notice, as liquidated damages.

(c) In the event of the death of the Second Party, before the full performance by the Second Party of this contract, and provided no payment hereunder shall then be in arrears, the First Party shall, upon demand, pay to the heirs, executors and administrators of the Second Party, upon proper proof of such death, with full surrender and release of this contract and all rights thereunder, all moneys paid hereon or hereunder, with interest thereon at four (4%) per cent per annum.

(d) That no assignment of this contract shall be made by the Second Party, without the prior written consent of the First Party.

(e) That all contracts, agreements and representations heretofore made by the parties hereto, or their agents, shall be deemed to have merged into and be superseded by this agreement; and that no modification of this agreement, nor waiver of any term or condition

hereof, shall be of any force and effect, unless the same shall be in writing, endorsed hereon, and shall be signed by both of the parties hereto; and no waiver of the breach of any such term, or condition, shall be evidence of, or be construed as, a waiver of, any other, or subsequent, breach of the same, or of any other term, or condition.

(f) That the Second Party does hereby covenant and agree to and with the First Party, its successors and assigns, as follows:

That neither the Second Party, nor his heirs or assigns, shall, or will, at any time hereafter, erect, or permit to be erected, upon any part of the aforesaid premises, any building, except a two-story dwelling, with a peaked roof, or on less than two lots, or without a cellar, or that shall cost less than four thousand (\$4,000) dollars; nor shall such building, or any part thereof, except the steps, piazza, or bay window, and any other usual projections thereof be erected, or maintained, upon any part of said premises, within fifteen feet of the building line, except (1) that if such dwelling shall be erected upon that portion of the property of the First Party, shown on map of section three, and upon that portion of said property shown on map of section four, which lies on, or north, of St. Marks Place, it may cost not less than three thousand (\$3,000) dollars; and except further (2) that buildings for business purposes may be erected, or maintained, on the Merrick Road between Carona and Grove Avenues; and such buildings, as may be allowed by the last exception, may be erected on one lot, on the line of said streets and avenues, provided, however, that such buildings shall be not less than two stories high, and shall have a cellar, and shall cost not less than four thousand (\$4,000) dollars; and except further (3) that the erection of a barn, or stable, for horses, such as shall appertain to a private residence, may be erected, provided, however, that such barn, or stable, if erected, shall stand not less than sixty (60) feet from the avenue, or street, upon which said premises front, and shall stand not less than fifteen (15) feet from the line of any side street, or avenue.

That neither the Second Party, nor his heirs or assigns, shall, or will, at any time hereafter, erect, or permit to be erected, upon any part of the aforesaid premises, any milkman's stable, slaughter house, smith shop, forge, furnace, steam engine, brass foundry, nail, iron or other foundry, or any manufactory for making gunpowder, glue, varnish, vitriol, ink, tobacco, turpentine, or for the boiling of

bones, or for the tanning, dressing or preparing of skins, hides or leather, or any ale-house, brewery, distillery, or any building for the carrying on of any obnoxious, dangerous, or offensive, trade or business.

That neither the Second Party, nor his heirs or assigns, shall sell, or offer, or allow, to be sold, on the described premises, or any part thereof, strong, or spirituous, liquors, or ale, beer, or wine, or any intoxicating liquors of any kind, nor otherwise create, or cause to be created, any use of the said property, which may legally be deemed a nuisance, or be objectionable in any way.

That neither the Second Party, nor his heirs or assigns, shall, or will, place, suffer, or maintain, upon any part of said land, any sign, or other advertising device, larger than six (6) square feet, and shall not, or will not, place, suffer and maintain more than one such sign upon any one lot.

5. That, upon the full payment of the said principal sum, with interest as above provided, and the performance of the conditions hereof, the said premises shall be conveyed to the said Second Party by a proper deed, containing a clause of general warranty, and full covenants, for conveying and assuring the Second Party, or his heirs and assigns, the fee simple of said premises, free from all encumbrances, except as hereinbefore otherwise provided, in respect of taxes and restrictions, reserving, however, to the First Party, or to its assigns, the right to lay, beneath the surface of the soil, at the end of the lots hereby conveyed, within three (3) feet from the end of the same, gas, water and sewer pipes, or electric light or power fixtures; and the Second Party agrees to accept said deed, as full performance by said First Party of its covenants and undertakings hereunder, and, upon receipt thereof, to surrender this agreement.

6. The provisions aforesaid shall apply to, and bind, the heirs, executors, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the First Party has signed this instrument, by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

John Doe Co., Inc.,
By John Doe,
President.

(Seal)

Attest:

John Jones.
Secretary.

Richard Roe (L.S.).

No. 397.

Same—another form.⁴

AGREEMENT, made January 5, 1923, between Doe Land Co., Inc., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. The First Party agrees to sell and convey, and the Second Party agrees to purchase, all those lots and parcels of land, situate, lying and being at Doe Beach, in the County of Nassau, State of New York, known as and by Lots No. 1 to No. 10, both inclusive, in Block 16A on map of the property of the First Party, known as Map No. 1, dated March, 1921, made by Henry Koe, landscape engineer: it being understood, however, that the Second Party purchases the said lots with the right to use the surface of the street only, and that the sale of the ownership thereof is not included in this agreement.

2. The First Party hereby reserves, however, for itself, its successors and assigns,

(a) the right of laying under said premises, at any time, pipe and conduits for sewers, electric lights, telephone and gas; and

(b) the right of raising the grade of property herein described to the general level of surrounding property, and of having its agents, servants and employees cross and recross said property with pipes, machinery, etc., for a reasonable time, to complete the improvements upon this and surrounding property; and

(c) all franchise rights in the street.

3. The foregoing rights reserved by the First Party shall not merge or be affected, in any way, by any subsequent deed to said

⁴ Adapted from *Strauss v. Estates of Long Beach* (1919), 187 App. Div. 876, 176 N. Y. Supp. 447.

property not mentioning said rights, which may be delivered to the Second Party.

4. The Second Party hereby assumes payment of all taxes and assessments levied upon said lot, after the date hereof. In case said taxes and assessments shall be paid by the First Party, interest will be charged at the rate of five (5%) per cent per annum from the date of the payment.

5. The price shall be twenty thousand (\$20,000) dollars, payable, as follows:

(a) The sum of three thousand (\$3,000) dollars, upon the signing and delivery of this agreement, the receipt of which sum is hereby acknowledged; and

(b) The sum of one hundred and fifty (\$150) dollars on the first day of each and every month following the date hereof, until the whole of said principal sum, with interest at six (6%) per cent per annum on all unpaid balances, shall have been fully paid by the Second Party.

6. The following are the further terms and conditions of this contract:

(a) The Second Party agrees to make payments promptly, and does bind himself, his heirs, executors and administrators faithfully to do so.

(b) Until further notice, all payments shall be made to the First Party, at its office at No. 111½ Broadway, Borough of Manhattan, New York City, and only such payments as shall be receipted for by an authorized agent of the First Party shall be recognized by the First Party. All other payments shall be made, at the risk of the Second Party.

(c) Time shall be the essence of this contract, and of all its conditions, and, in case the Second Party shall fail to make said payments, or any of them, when the same shall become due, then this contract shall become null and void, and all rights of the Second Party under this agreement, or all rights of his assigns, shall be cancelled, and the same, and the amounts paid by the Second Party on this contract, shall be forfeited to the First Party, at its option, and remain its property, as liquidated damages for the failure to fulfill this agreement completely, or at the option of the said First Party, the balance due under this contract shall become immediately due and payable.

(d) No modification of this agreement in any of its particulars

shall be binding upon the First Party, unless the same shall be in writing and duly approved of by an officer of the First Party.

(e) No assignment of this contract, without the consent of the First Party, shall be valid.

(f) No building shall be erected, unless the plans and specifications for the same shall have been first submitted to, and approved of by, the First Party.

7. Upon the payment in full of the above amount, the First Party shall convey to the Second Party, or his assigns, the premises above described, by full covenant and warranty deed, free from all encumbrances, except that the Second Party shall make the covenants in the deed, which are hereinafter set forth, and the deed shall contain the reservations above mentioned.

8. The First Party agrees to give, and the Second Party agrees to accept, title such as the Doe Guarantee & Trust Company shall approve. The deed of the said premises shall be a full covenant and warranty deed, free from all encumbrances, except as herein stated. Said deed shall be delivered at the office of the said Doe Guarantee & Trust Company at No. 175½ Broadway, Borough of Brooklyn, New York City, when all the terms and conditions of this contract shall have been complied with by the Second Party.

9. The following covenants shall be inserted in the deed of the premises:

And the said Second Party, for himself, his heirs and assigns, does hereby covenant and agree to and with the First Party, its successors and assigns, as follows:

FIRST. That neither the said Second Party, nor his heirs, or assigns, shall, or will, erect, or permit, upon any portion of said premises, any building, except a detached dwelling house for one family only, of not less than two (2) stories in height, with a cellar, nor of less cost than fourteen thousand (\$14,000) dollars, nor with a roof of the character, or description, known as a "flat roof."

SECOND. That neither the said Second Party, nor his heirs, or assigns, shall, or will, permit more than one such dwelling, as above set forth, on each parcel of land one hundred (100) feet in width by one hundred (100) feet in depth.

THIRD. That neither the said Second Party, nor his heirs, or assigns, shall, or will, manufacture, or sell, or cause, or permit, to be manufactured, or sold, on any portion of the premises hereby conveyed, any goods, or merchandise, of any kind, and will not

carry on, or permit to be carried on, on any part of said premises, any trade, or business whatsoever, or any boarding house.

FOURTH. (a) That neither the said Second Party, nor his heirs, or assigns, shall, or will, erect, or permit, upon any portion of the said premises, any building within twenty (20) feet of the building line of Beech Street, Grand Boulevard and Penn Street, and will not erect, or permit, on said premises any fences, excepting hedge fences, and will not permit rain water, or sewage, to be discharged from said property into the sewerage system at Doe Beach.

(b) The above covenant in respect of a twenty (20) foot building line shall not apply to steps, piazzas, bay or oriel windows upon houses erected, in accordance with the above restriction.

FIFTH. These covenants shall run with the land, and shall be construed as covenants running with the land, until January 1, 1940, when they shall cease and terminate, except, however, it is mutually understood and agreed that the above covenants and restrictions, or any of them, may be altered, or annulled, at any time prior to January 1, 1940, by written agreement between the First Party, its successors and assigns, and the owner, for the time being, of the premises, wherein it is agreed to alter, or annul, said covenants and restrictions, or any of them, and said agreements shall be effectual to alter, or annul, said covenants and restrictions as to said premises, without the consent of the owner, or owners, of any adjacent premises. Nothing herein contained shall be construed, nor shall there be any obligation upon the First Party, its successors and assigns, to restrict, in any manner, any other premises, now, or hereafter, owned by the First Party, its successors and assigns.

10. These covenants shall be binding upon the parties to this contract, and their assigns, and any party claiming to own this contract, by assignment, shall be bound by all the terms and conditions herein set forth.

11. The First Party does agree, as soon as practicable after the date of this contract, consistent with the entire scheme of development, and not later than June 3, 1924, to make the following improvements, without expense to the Second Party:

(a) To build sewers, electric lightings, telephone conduits and water mains for said premises, and then to pave the street in front of said premises.

(b) To lay a concrete sidewalk five (5) feet in width on the

sidewalk, and to lay a curb of concrete along the edge of the sidewalk.

12. If the completed survey shall show buildings, railroad tracks, or any other structure upon the premises above described, at any time before the time set forth for the delivery of the deed, then, and in that event, the First Party shall have the right to remove said buildings, railroad tracks, or other structure, before delivering said deed, or, at its option, to return to the Second Party the purchase price.

IN WITNESS WHEREOF, the First Party has signed this instrument, by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, and the Second Party has hereunto set its hand and seal, the day and year first above written.

Doe Land Co., Inc.,
By John Doe,
President.

(Seal)

Attest:

John Brown,
Secretary.

Richard Roe (L.S.).

No. 398.

Agreement to sell block of real estate, conditioned upon vendor receiving deed from referee in foreclosure action.⁵

AGREEMENT, made January 5, 1923, between Doe Life Insurance Co., a corporation, duly organized under the laws of the State of New York, and having its principal office at No. 11½ Broadway, Borough of Manhattan, New York City (herein called the "First Party"), and Richard Roe, residing at No. 37½ Broadway, Borough of Manhattan, New York City (herein called the "Second Party"),

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

1. That the First Party, in consideration of the sum of two million (\$2,000,000) dollars to be paid as hereinafter mentioned, hereby agrees to sell unto the Second Party, all that certain tract, or parcel, of land and premises, situate, lying and being in the County of New York, City of New York, State of New York, being

⁵ Adapted from *Roberts v. N. Y. Life Ins. Co.* (1921), 195 App. Div. 97, 186 N. Y. Supp. 423.

the property known as "Doe Square Garden," and being the block bounded on the east by Koe Avenue, and on the west by Roe Avenue, on the south by 261½th Street, and on the north by 271½th Street, in the Borough of Manhattan, New York City, together with the appurtenances, and all the estate and rights of the First Party in and to said premises.

2. (a) This sale is conditioned upon the First Party receiving a deed of said property from Henry Koe, referee, or his successor, in the foreclosure suit of Doe Life Insurance Co. *vs.* John Jones; the Doe Life Insurance Co. having purchased said property, at the referee's sale, which occurred on December 8, 1922.

(b) The mortgagor shall have the privilege of obtaining a release from said mortgage on either, or both, the Koe Avenue or Roe Avenue fronts, one hundred (100) feet in depth, upon the payment of seven hundred and fifty thousand (\$750,000) dollars for each front.

3. The Second Party hereby agrees to purchase the said premises, for the consideration of two million (\$2,000,000) dollars, and to pay the same, as follows:

(a) One hundred thousand (\$100,000) dollars thereof in cash, at the time of the sealing and delivery of this agreement, the receipt whereof is hereby acknowledged;

(b) Three hundred thousand (\$300,000) dollars thereof in cash, at the time and place of the delivery of the deed of the said premises by the First Party, as hereinafter set forth;

(c) The balance of one million, six hundred thousand (\$1,600,000) dollars, by duly executing, acknowledging and delivering, at the time and place of delivery of said deed, the bond and mortgage of said Second Party, to secure the payment on January 1, 1928, of said sum of one million, six hundred thousand (\$1,600,000) dollars.

4. The said bond and mortgage shall bear interest, at the rate of five and one-half (5½%) per cent per annum, payable semi-annually on the first days of June and December in each year; and shall be of the form in which the First Party requires its bonds and mortgages to be drawn, and shall contain the same special clauses and covenants as to payment of interest, taxes and insurance, and the appointment of a receiver of the mortgaged premises, which the said bonds and mortgages of the First Party contain.

5. The said bond and mortgage shall be drawn by the counsel of

the First Party; and the Second Party shall pay for drawing and acknowledging said bond and mortgage and for recording said mortgage.

6. The First Party, upon receiving such payment, at the time and in the manner above mentioned, shall, at its own proper cost and expense, execute, acknowledge, and deliver, or cause to be executed, acknowledged and delivered, to the said Second Party, or his assigns, a proper deed, with covenants only against the grantor's acts, for the conveying to said Second Party, or assigns, the fee simple of the said premises, free from all encumbrances, except taxes, assessments and water rates, which may be payable after the date hereof, and subject to the attached schedule of bookings and leases now on said premises, and subject to the taxes of 1923; and such deed shall be delivered on March 1, 1923, at 12.00 M. at the office of John Smith, No. 57½ Broadway, Borough of Manhattan, New York City.

7. It is expressly understood and agreed that, unless the First Party shall receive the deed from said referee aforesaid, and shall be able to execute and deliver the deed for said premises, at the time above mentioned, then this contract shall be void, at the option of the Second Party, and the payment of one hundred thousand (\$100,000) dollars, with bank interest, made to it, shall be returned to the Second Party. But, if the First Party shall receive a deed from the referee of said property, then this contract shall be deemed to be binding in all respects.

8. It is expressly understood and agreed that, unless title shall be taken at said time and place, or unless said time of closing shall be duly extended, then this contract, at the option of the First Party, shall become void, and the said payment of one hundred thousand (\$100,000) dollars, made to it shall be retained by it as liquidated damages.

9. In case any valid defect to the title shall be found, and the same shall be rejected therefor by the Second Party, then this contract shall become void, and the said sum of one hundred thousand (\$100,000) dollars shall be returned, with interest.

10. It is further understood and agreed that the stipulations aforesaid shall apply to, and bind, the successors and assigns of the First Party, and the heirs, executors, administrators and assigns of the Second Party, respectively.

IN WITNESS WHEREOF, the First Party has signed this instrument

by its President, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, and the Second Party has hereunto set his hand and seal, the day and year first above written.

Doe Life Insurance Co.,
By John Doe,
President.

(Seal)

Attest:

John Brown,
Secretary.

Richard Roe (L.S.).

[Annex Schedule of Bookings and Leases.]

SECTION 2.—MISCELLANY.

No. 399.

Clause providing for effect of fire.⁶

Any loss, or damage, by fire to the building upon the parcel of land above described, prior to the delivery of the deed hereunder, shall not be deemed an objection to the title thereto; but the Vendor agrees to continue in force, at his own cost and expense, the present fire insurance policies thereon; and, in case of any loss, or damage, by fire, prior to the delivery of the deed hereunder, the Vendor shall, upon the delivery of the deed and the payment by the Vendee of the purchase price of said premises as above mentioned, either pay over to the Vendee the amount recovered under any and all such policies of fire insurance, or, if adjustment of the loss thereunder shall not have been made, the Vendor shall assign to the Vendee all of such policies of fire insurance and all of the Vendor's rights and claims thereunder.

No. 400.

Clause providing that premises sold are to be vacant.⁷

The above described premises shall be vacant, at the time of the delivery of the deed.

⁶ Adapted from *Anderson v. Steinway & Sons* (1917), 221 N. Y. 639, 117 N. E. 575.

⁷ Cf. *McCool v. Jacobus* (1867), 7 Robt. (N. Y.), 115.

No. 401.

Covenant by vendee to pay for coal in premises to be purchased, and designating firm to appraise the quantity thereof.⁸

The Purchaser will, at the closing of title, pay to the Seller the sum of nine (\$9) dollars per ton for all coal, which may be on the said premises upon the day of closing of title, and the quantity then therein shall be determined by an appraisalment, which shall be made by Koe & Son.

No. 402.

Clause requiring vendor to convey title free from all except certain incumbrances.⁹

The property shall be conveyed by bargain, or sale deed, with good title in fee simple, free from all incumbrances, except party wall rights of an adjoining owner, where such walls exist, and except as set forth below.

No. 403.

Clause requiring vendor to pay taxes, etc., which become a lien, prior to delivery of deed.¹⁰

All taxes, assessments and water rents which, at the time of sale, are liens upon the property, will be allowed out of the purchase money, provided the Purchaser shall, previous to the delivery of the deed, produce proof of such liens and duplicate receipts for the payment thereof; and the existence of any unpaid tax, or assessment, shall not be deemed an objection to the title, provided the amount thereof shall be so allowed.

⁸ Adapted from *Freeman v. Ralph Realty Co.* (1921), 198 App. Div. 788, 191 N. Y. Supp. 72.

⁹ Adapted from *Ivanhoe v. City Real Estate Co.* (1922), 118 Misc. 556, 194 N. Y. Supp. 81.

¹⁰ Adapted from *Ivanhoe v. City Real Estate Co.* (1922), 118 Misc. 556, 194 N. Y. Supp. 81.

CHAPTER XXIV

CERTIFICATES OF ACKNOWLEDGMENT AND OF PROOF

Section 1.—Certificates of Acknowledgment.

- No. 404—Certificate of acknowledgment of married woman, upon alienation of homestead.
- No. 405—Certificate of acknowledgment of person known to officer.
- No. 406—Certificate of acknowledgment of two persons known to officer.
- No. 407—Certificate of acknowledgment of one of several persons, who is known to officer.
- No. 408—Certificate of acknowledgment of corporate officer, who is known to officer.
- No. 409—Certificate of acknowledgment of executor known to officer.
- No. 410—Certificate of acknowledgment of receiver, who is known to officer.
- No. 411—Certificate of acknowledgment by transferor of claim against the United States, made after allowance.
- No. 412—Certificate of acknowledgment of trustee known to officer.
- No. 413—Certificate of acknowledgment of substituted trustee known to officer.
- No. 414—Certificate of acknowledgment of agent, acting under recorded power of attorney, who is known to officer.
- No. 415—Certificate of acknowledgment of agent, acting under an unrecorded power of attorney, who is known to officer.
- No. 416—Certificate of acknowledgment of agent, acting under recorded power of attorney, who is known to officer—recommended by statutory board of consolidation.
- No. 417—Certificate of acknowledgment of agent, acting under an unrecorded power of attorney, who is known to officer—recommended by statutory board of consolidation.
- No. 418—Certificate of acknowledgment of officer of joint stock association, who is known to officer.

- No. 419—Certificate of acknowledgment of member of firm, who is known to officer.
- No. 420—Certificate of acknowledgment of person originally unknown to officer, whose identity is established by the oath of a person known to officer.

Section 2.—Certificates of Acknowledgment, Required by Stock Exchange Practice.

- No. 421—Certificate of acknowledgment of married woman, who is known to officer.
- No. 422—Certificate of acknowledgment of unmarried woman, who is known to officer.
- No. 423—Certificate of acknowledgment of widow, who is known to officer.
- No. 424—Certificate of acknowledgment for firm.
- No. 425—Certificate of acknowledgment for a firm, after dissolution.

Section 3.—Certificates of Acknowledgment, Recommended by Commissioners on Uniform State Legislation.

- No. 426—Certificate of acknowledgment by person, who is known to officer.
- No. 427—Certificate of acknowledgment by two persons, who are known to officer.
- No. 428—Certificate of acknowledgment by person acting as agent, who is known to officer.
- No. 429—Certificate of acknowledgment by officer of a corporation, who is known to officer.
- No. 430—Certificate of acknowledgment by officer of a joint stock association, who is known to officer.

Section 4.—Certificates of Proof.

- No. 431—Certificate of proof by subscribing witness known to officer.
- No. 432—Certificate of proof by subscribing witness originally unknown to officer, whose identity is established by the oath of a person known to officer.

SECTION 1.—CERTIFICATES OF ACKNOWLEDGMENT.¹

No. 404.

Certificate of acknowledgment of married woman, upon alienation of homestead.²

State of Alabama, }
Pike County, } ss:

I, John Doe, a notary public in and for said county in said state, do hereby certify that on this 5th day of January, 1923, before me personally appeared the within named Jane Roe, to me known, and known to me, to be the wife of the within named Richard Roe, and, after separate examination separate and apart from her husband, during which I made known to her the contents of the foregoing instrument and fully advised her of her rights and the effect of signing said instrument, she, thereupon, in my presence, signed and sealed the said instrument, and she duly acknowledged to me that she signed, sealed and delivered the same as her voluntary act and deed; and the said Jane Roe, being of full age, on private examination separate and apart from her husband, before me further acknowledged that, for the purposes, uses and considerations therein mentioned, she signed, sealed and delivered the same, including the release and waiver of the right of homestead, of her own free will and accord, and as her voluntary act and deed, freely, and without fear, constraints, restraints, or threats of, or from, her said husband, and she further acknowledged and stated that she did not wish to retract the execution of the same, and that she consented that the same might be recorded.

¹ Technically, an acknowledgment is the act by which a person, who has executed an instrument, declares to a competent officer that he is the person described in and who executed it (*Cook v. Kelley* (1861), 12 Abb. Pr. (N. Y.) 35; aff'd. (1862), 14 Abb. Pr. (N. Y.) 466). As commonly used, the word signifies both an admission of execution and the officer's written certification to the admission (*Rogers v. Pell* (1898), 154 N. Y. 518, 49 N. E. 75). As the acknowledgment of an instrument may be necessary in order to make it valid, or to entitle it to filing or recording, or to dispense with other proof of its execution in order to make it admissible in evidence, it is always advisable to append a certificate of acknowledgment to every agreement. The certificates of acknowledgment in this chapter, except as otherwise indicated, conform to the requirements of the laws of the state of New York. While the forms of certificates of acknowledgment may vary somewhat in the different states, they are commonly so well known to local users that it has been deemed superfluous to include all of them.

² Specific statutory enactments in many of the states require a special form of acknowledgment, when a wife joins in the execution of an instrument for the purpose of releasing her homestead rights. This form of acknowledgment has been prepared to satisfy the requirements of the homestead statutes, so-called, of the various states.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, this 5th day of January, 1923.

John Doe, Notary Public,
(Official Seal) Pike County, Alabama.
My commission expires December 31, 1925.

No. 405.

Certificate of acknowledgment of person known to officer.³

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally came John Doe, to me known to be the person described in, and who executed, the foregoing instrument, and acknowledged that he executed the same.

Richard Roe,
Notary Public, New York County, No. 50.
(Seal) New York Register No. 150.

No. 406.

Certificate of acknowledgment of two persons known to officer.⁴

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally came John Doe and Jane Doe, to me known to be the persons described in, and who executed, the foregoing instrument, and they severally acknowledged that they executed the same.

Richard Roe,
Notary Public, New York County, No. 50.
(Seal) New York Register No. 150.

³ Cf. *Fryer v. Rockefeller* (1875), 63 N. Y. 268.

⁴ Cf. *Paolillo v. Faber* (1900), 56 App. Div. 241, 67 N. Y. Supp. 638, 9 N. Y. Ann. Cas. 32.

No. 407.

Certificate of acknowledgment of one of several persons, who is known to officer.⁵

State of New York, }
 City of New York, } ss:
 County of New York, }

On this 5th day of January, 1923, before me personally came John Doe, to me known to be one of the persons described in, and who executed, the foregoing instrument, and acknowledged that he executed the same.

Richard Roe,
 Notary Public, New York County, No. 50.
 New York Register No. 150.

(Seal)

No. 408.

Certificate of acknowledgment of corporate officer, who is known to officer.⁶

State of New York, }
 City of New York, } ss:
 County of New York, }

On this 5th day of January, 1923, before me personally came John Doe, to me known, who, being by me duly sworn, did depose and say that he resides in New York City; that he is the president of the John Doe Co., Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

Richard Roe,
 Notary Public, New York County, No. 50.
 New York Register No. 150.

(Seal)

⁵ Cf. *People v. Donagan* (1919), 226 N. Y. 84, 123 N. E. 71.

⁶ Cf. *Canandaigua Academy v. McKechnie* (1879), 19 Hun. (N. Y.) 62.

No. 409.

Certificate of acknowledgment of executor known to officer.⁷

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally came John Doe, to me known to be the person described in, and who executed, the foregoing instrument, and acknowledged that he executed the same, as Executor of the Last Will and Testament of John Jones, deceased.

Richard Roe,
Notary Public, New York County, No. 50.
New York Register No. 150.

(Seal)

No. 410.

Certificate of acknowledgment of receiver, who is known to officer.⁸

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally came John Doe, to me known to be the individual described in, and who executed, the foregoing instrument, and acknowledged that he executed the same, as receiver of the property of Henry Koe, a judgment-debtor.

Richard Roe,
Notary Public, New York County, No. 50.
New York Register No. 150.

(Seal)

⁷ Cf. *Freedman v. Oppenheim* (1903), 80 App. Div. 487, 81 N. Y. Supp. 110.

⁸ Cf. *Bidwell v. Sullivan* (1897), 17 App. Div. 629, 45 N. Y. Supp. 530, 4 N. Y. Ann. Cas. 161, 26 Civ. Proc. R. 392.

No. 411.

Certificate of acknowledgment by transferor of claim against the United States, made after allowance.⁹

State of New York, }
 City of New York, } ss:
 County of New York, }

I, John Doe, a notary public in and for the said county and state, do hereby certify that on this 5th day of January, 1923, before me personally appeared the within named Richard Roe, to me known, and known to me, to be the person described in, and who executed, the foregoing instrument; and I, having first read to the said Richard Roe the contents of the foregoing instrument, and having fully explained to the said Richard Roe his rights and the effect of signing said instrument, he, thereupon, in my presence, signed, sealed, delivered and acknowledged the said instrument as his voluntary act and deed, for the purposes, uses and considerations therein mentioned.

John Doe,
 Notary Public, New York County, No. 50.
 New York Register No. 150.

(Seal)

No. 412.

Certificate of acknowledgment of trustee known to officer.¹⁰

State of New York, }
 City of New York, } ss:
 County of New York, }

On this 5th day of January, 1923, before me personally came John Doe, to me known to be the individual described in, and who executed, the foregoing instrument, and acknowledged that he executed the same as Trustee under the Last Will and Testament of Henry Koe, deceased.

Richard Roe,
 Notary Public, New York County, No. 50.
 New York Register No. 150.

(Seal)

⁹ Cf. U. S. Rev. Stat. § 3477; *National Bank of Commerce v. Downie* (1910), 218 U. S. 345, 31 Sup. Ct. Rep. 89, 54 Law ed. 1065, 20 Ann. Cas. 1116; *Manhattan Commercial Co. v. Paul* (1916), 216 N. Y. 481, 111 N. E. 76.

¹⁰ Cf. *Fryer v. Rockefeller* (1875), 62 N. Y. 268.

No. 413.

Certificate of acknowledgment of substituted trustee known to officer.¹¹

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally came John Doe, to me known to be the individual described in, and who executed, the foregoing instrument, and acknowledged that he executed the same as Substituted Trustee under the Last Will and Testament of Henry Koe, deceased.

Richard Roe,
Notary Public, New York County, No. 50.
New York Register No. 150.

(Seal)

No. 414.

Certificate of acknowledgment of agent, acting under recorded power of attorney, who is known to officer.¹²

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally came John Doe, to me known to be the person described in, and who executed, the foregoing instrument, and he acknowledged that he executed the foregoing instrument as the act of Richard Koe, by virtue of a certain power of attorney executed by Richard Koe, bearing date the 20th day of December, 1922, and recorded in the office of the register of the county of New York, on the 20th day of December, 1922, in Liber 25 of Powers of Attorney, page 2.

Richard Roe,
Notary Public, New York County, No. 50.
New York Register No. 150.

(Seal)

¹¹ Cf. *Fryer v. Rockefeller* (1875), 63 N. Y. 268.

¹² Cf. *Lowenstein v. Flaurand* (1882), 82 N. Y. 491.

No. 415.

Certificate of acknowledgment of agent, acting under an unrecorded power of attorney, who is known to officer.¹³

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally came John Doe, to me known to be the person described in, and who executed the foregoing instrument, and he acknowledged that he had executed the foregoing instrument as the act of Henry Koe, by virtue of a certain power of attorney executed by Henry Koe bearing date the 20th day of December, 1922, and to be recorded in the office of the register of the county of New York simultaneously with the foregoing instrument.

Richard Roe,

Notary Public, New York County, No. 50.

(Seal)

New York Register No. 150.

No. 416.

Certificate of acknowledgment of agent, acting under recorded power of attorney, who is known to officer—recommended by statutory board of consolidation.¹⁴

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally came John Doe, to me personally known to be the person described and appointed attorney in fact in and by a certain power of attorney issued by Henry Koe, bearing date the 20th day of December, 1922, and recorded in the office of the Register of the County of New York, on the 20th day of December, 1922, in Liber 25 of powers of attorney, page 2, and acknowledged to me that he had executed the foregoing instrument as the act of the said Henry Koe.

Richard Roe,

Notary Public, New York County, No. 50.

(Seal)

New York Register No. 150.

¹³ Cf. *Friedman v. Blauner* (1919), 227 N. Y. 327, 125 N. E. 443.

¹⁴ Cf. *N. Y. Consol. Laws* (1909), ch. 52, sec. 298.

No. 417.

Certificate of acknowledgment of agent, acting under an unrecorded power of attorney, who is known to officer—recommended by statutory board of consolidation.¹⁵

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally came John Doe, to me personally known to be the person described and appointed attorney in fact in and by a certain power of attorney executed by Henry Koe, bearing date the 20th day of December, 1922, and to be recorded in the office of the Register of the County of New York simultaneously with the foregoing instrument, and acknowledged to me that he had executed the foregoing instrument as the act of the said Henry Koe.

Richard Roe,
Notary Public, New York County, No. 50.
New York Register No. 150.

(Seal)

No. 418.

Certificate of acknowledgment of officer of joint stock association, who is known to officer.¹⁶

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally came John Doe, to me known, who, being by me duly sworn, did depose and say that he resides in New York City; that he is the president of the Doe Society, the joint stock association described in and which executed the above instrument; that he knows the seal of said association; that the seal affixed to said instrument is such association's seal; that it was so affixed by order of the board of

¹⁵ Adapted from form recommended by Board of Statutory Consolidation, *N. Y. Consol. Laws* (1909), ch. 52, sec. 298.

¹⁶ *Cf. Canandaigua Academy v. McKeechnie* (1879), 19 Hun. (N. Y.) 62.

trustees of said joint stock association; and that he signed his name thereto by like order.

Richard Roe,
Notary Public, New York County, No. 50.
New York Register No. 150.

(Seal)

No. 419.

Certificate of acknowledgment of member of firm, who is known to officer.¹⁷

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally came John Doe, to me known to be the person described in, and who executed, the foregoing instrument, and acknowledged that he executed the same as the act of the firm of Doe & Koe.

Richard Roe,
Notary Public, New York County, No. 50.
New York Register No. 150.

(Seal)

No. 420.

Certificate of acknowledgment of person originally unknown to officer, whose identity is established by the oath of a person known to officer.¹⁸

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally came John Doe, to me satisfactorily proven to be the person described in, and who executed, the foregoing instrument, by the sworn statements of one Henry Koe, who is known to me, and who, being by me duly sworn, did depose and say that he resides at No. 11½ Broadway, Borough of Manhattan, New York City, that he has known the said John Doe for two years, and that he knew him to

¹⁷ Cf. *Fryer v. Rockefeller* (1875), 63 N. Y. 268.

¹⁸ Cf. *N. Y. Consol. Laws* (1909), ch. 52, sec. 303.

be the person described in, and who executed, the foregoing instrument; and the said John Doe thereupon acknowledged to me that he executed the same.

Richard Roe,

Notary Public, New York County, No. 50.

(Seal)

New York Register No. 150.

**SECTION 2.—CERTIFICATES OF ACKNOWLEDGMENT
REQUIRED BY STOCK EXCHANGE PRACTICE.¹⁹**

No. 421.

Certificate of acknowledgment of married woman, who is known to officer.^{19a}

State of New York, }
City of New York, }
County of New York, } ss:

On this 5th day of January, 1923, before me came Jane Doe and John Doe, her husband, both of them to me known, and they severally acknowledged that they executed the foregoing Assignment and Power of Attorney for the purposes therein mentioned.

Richard Roe,

Notary Public, New York County, No. 50.

(Seal)

New York Register No. 150.

¹⁹ Many of the large corporations, as well as many of the registrars and transfer agents, have adopted various regulations in respect of the transfer of stocks and bonds. Under certain circumstances, these regulations require the acknowledgment, or proof, of assignments of securities in order to render them transferable. The various certificates of acknowledgment in this section have been drawn to conform to these regulations, and, if used, will satisfy the rules of the various stock exchanges respecting proper delivery.

^{19a} While an assignment by a married woman alone of securities, which are made out in the name of a married woman, will not aid in making a proper delivery, a joint execution of the assignment by the husband and wife and a joint acknowledgment before a notary public, or other proper official, will make the assignment valid, during the period that the corporate transfer books may be closed.

No. 422.

Certificate of acknowledgment of unmarried woman, who is known to officer.²⁰

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally came Jane Doe, to me known and known to me to be an unmarried woman, and known to me to be the same person named in the within assignment and described in and who executed the foregoing Assignment and Power of Attorney, and acknowledged to me that she executed the same for the purposes named.

Richard Roe,
Notary Public, New York County, No. 50.
New York Register No. 150.

(Seal)

No. 423.

Certificate of acknowledgment of widow, who is known to officer.²¹

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally came Jane Doe, to me known and known to me to be a widow, and known to me to be the same person named in the within Assignment and Power of Attorney, and acknowledged to me that she executed the same for the purposes named.

Richard Roe,
Notary Public, New York County, No. 50.
New York Register No. 150.

(Seal)

²⁰ An assignment of a security, which is made out in the name of an unmarried woman without the prefix "Miss" will be effective, only if the execution of the assignment is acknowledged before a notary public, or other proper official. If a security is made out in the name of an unmarried woman with the prefix "Miss," an assignment of the security, without an acknowledgment will be valid, if the assignment is signed by the unmarried woman, with the prefix "Miss". See note 19, *ante*.

²¹ An assignment of a security which is made out in the name of a widow must be acknowledged, in order to be a good delivery. See note 19, *ante*.

No. 424.

Certificate of acknowledgment for firm.²²

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally appeared John Doe, to me known and known to me to be one of the firm of John Doe & Co., named in the within certificate, and described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said firm.

Richard Roe,
Notary Public, New York County, No. 50.
New York Register No. 150.

(Seal)

No. 425.

Certificate of acknowledgment for a firm, after dissolution.²³

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally appeared John Doe, to me known and known to me to have been on the 20th day of December, 1922, one of the firm of John Doe & Co., named in the within certificate, and described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said firm.

Richard Roe,
Notary Public, New York County, No. 50.
New York Register No. 150.

(Seal)

²² An assignment of a security which is made out in the name of a firm, must be acknowledged by one of the partners in behalf of the firm, in order to constitute a good delivery. See note 19, *ante*.

²³ If the firm has been dissolved, the acknowledgment must show that, at the date of the assignment, the partner who executed the assignment, was then a member of the firm. See note 13, *ante*.

SECTION 3.—CERTIFICATES OF ACKNOWLEDGMENTS, RECOMMENDED BY COMMISSIONERS ON UNIFORM STATE LEGISLATION.

No. 426.

Certificate of acknowledgment by person, who is known to officer.²⁴

State of New York, }
 City of New York, } ss:
 County of New York, }

On this 5th day of January, 1923, before me personally appeared John Doe, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Richard Roe,
 Notary Public, New York County, No. 50.
 (Seal) New York County Register No. 150.

No. 427.

Certificate of acknowledgment by two persons, who are known to officer.²⁵

State of New York, }
 City of New York, } ss:
 County of New York, }

On this 5th day of January, 1923, before me personally appeared John Doe and Henry Koe, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Richard Roe,
 Notary Public, New York County, No. 50.
 (Seal) New York Register No. 150.

²⁴ The certificates of acknowledgment and of proof recommended by the Commissioners on Uniform State Legislation have been adopted in Alaska, Iowa, Louisiana, Massachusetts, Michigan, Montana (with modifications), New Mexico, North Dakota (with modifications) and Tennessee (XLVII Reports of American Bar Association (1920), 714).

²⁵ Cf. Note 24, *ante*.

No. 428.

Certificate of acknowledgment by person acting as agent, who is known to officer.²⁶

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally appeared John Doe, to me known to be the person described in and who executed the foregoing instrument in behalf of Henry Koe, and acknowledged that he executed the same, as the free act and deed of said Henry Koe.

(Seal) Richard Roe,
Notary Public, New York County, No. 50.
New York Register No. 150.

No. 429.

Certificate of acknowledgment by officer of a corporation, who is known to officer.²⁷

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me appeared John Doe, to me personally known, who, being by me duly sworn, did say that he is the president of John Doe, Inc., and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said John Doe acknowledged said instrument to be the free act and deed of said corporation.

(Seal) Richard Roe,
Notary Public, New York County, No. 50.
New York Register No. 150.

²⁶ Cf. Note 24, *ante*.

²⁷ Cf. Note 24, *ante*.

No. 430.

Certificate of acknowledgment by officer of a joint stock association, who is known to officer.²⁸

State of New York, }
 City of New York, } ss:
 County of New York, }

On this 5th day of January, 1923, before me appeared John Doe, to me personally known, who, being by me duly sworn, did say that he is the president of John Doe & Co., and that the seal affixed to said instrument is the seal of said association, and that said instrument was signed and sealed in behalf of said association by authority of its board of trustees, and said John Doe acknowledged said instrument to be the free act and deed of said association.

Richard Roe,
 Notary Public, New York County, No. 50.
 New York Register No. 150.

(Seal)

SECTION 4.—CERTIFICATES OF PROOF.

No. 431.

Certificate of proof by subscribing witness known to officer.²⁹

State of New York, }
 City of New York, } ss:
 County of New York, }

On this 5th day of January, 1923, before me personally came John Doe, to me known, who, being by me duly sworn, said: that he resides at No. 11½ Broadway, Borough of Manhattan, New York City; that he knows Henry Koe, and knew him to be the person described in, and who executed, the foregoing instrument;

²⁸ Cf. Note 24, *ante*.

²⁹ Cf. The execution of an instrument may, also, be established, without an acknowledgment, by one, who witnessed its execution, and, at the same time, subscribed his name to it as a witness (*N. Y. Consol. Laws* (1909), Ch. 52, secs. 292, 304, 306; *VanCortland v. Toser* (1838), 20 Wend. (N. Y.) 423). Proof in such a case must be made by the witness who is an officer and who is qualified to take acknowledgments. (*Cook v. Kelley* (1861), 12 Abb. Pr. (N. Y.) 35; *aff'd.* (1862), 14 Abb. Pr. (N. Y.) 466).

that he saw the said Henry Koe execute the said instrument; and that he thereupon subscribed his name as a witness thereto.

Richard Roe,

Notary Public, New York County, No. 50.

(Seal)

New York Register No. 150.

No. 432.

Certificate of proof by subscribing witness originally unknown to officer, whose identity is established by the oath of a person known to officer.³⁰

State of New York, }
City of New York, } ss:
County of New York, }

On this 5th day of January, 1923, before me personally came John Doe, to me satisfactorily proven to be the subscribing witness to the foregoing instrument, by the sworn statements of one Henry Koe, who is known to me, and, who, being by me duly sworn, said: that he resides at No. 11½ Broadway, Borough of Manhattan; that he has known the said John Doe for two years and that he knew him to be the subscribing witness to the foregoing instrument; and the said John Doe, being by me duly sworn, said: that he resides at No. 11½ Broadway, Borough of Manhattan, New York City, State of New York; that he knows John Jones, and knew him to be the person described in, and who executed the foregoing instrument; and that he, the said John Doe, thereupon subscribed his name as a witness thereto.

Richard Roe,

Notary Public, New York County, No. 50.

(Seal)

New York Register No. 150.

³⁰ *Cf. Tuit v. People* (1867), 36 N. Y. 431; note 29, *ante*.

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